

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:)	Chapter 11
)	
MURRAY ENERGY HOLDINGS CO., <i>et al.</i> , ¹)	Case No. 19-56885 (JEH)
)	
)	Judge John E. Hoffman
)	
Debtors.)	(Joint Administration Requested)
)	

**DECLARATION OF ROBERT A. CAMPAGNA,
MANAGING DIRECTOR AT ALVAREZ & MARSAL
NORTH AMERICA, LLC, IN SUPPORT OF FIRST DAY MOTIONS**

I, Robert A. Campagna, hereby declare under penalty of perjury:

1. I am a Managing Director and Co-Head of the Eastern Region Restructuring Practice at Alvarez & Marsal North America, LLC ("A&M")², a restructuring advisory services firm with numerous offices throughout the country, which has been engaged as a financial advisor since August 2019 to Murray Energy Corporation ("MEC") one of the above-captioned debtors and debtors in possession (collectively, the "Debtors," and together with its non-debtor affiliates, "Murray").

2. I have over 25 years of distressed company advisory experience. I have advised clients in numerous major bankruptcy cases, including Westmoreland Coal Company, Payless ShoeSource, Alpha Natural Resources, Inc., GT Advanced Technologies Inc., Cengage Learning,

¹ Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.primeclerk.com/MurrayEnergy>. The location of Debtor Murray Energy Holdings Co.'s principal place of business and the Debtors' service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

² Capitalized terms used but not defined in this section have the meanings assigned to such terms in the applicable First Day Motions.

Inc., V2V Holding LLC, Education Holdings 1, Inc., Orchard Brands Corporation, Cooper-Standard Automotive, and Interstate Bakeries Corporation. I have substantial knowledge and experience in assisting financially distressed companies with stabilizing their financial condition, analyzing their operations and developing business plans to accomplish the necessary restructuring of their operations and finances, through roles in both senior management and as a restructuring advisor. I received my bachelor's degree in business administration from Bucknell University, and I am also a Certified Public Accountant, as well as a Certified Insolvency and Restructuring Advisor.

3. I am generally familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records. I submit this declaration to assist this United States Bankruptcy Court for the Southern District of Ohio (the "Court") and parties in interest in understanding the circumstances that resulted in the commencement of these chapter 11 cases and in support of: (a) the Debtors' petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") filed on the date hereof (the "Petition Date"); and (b) the relief that the Debtors have requested from the Court pursuant to the motions and applications described herein (collectively, the "First Day Motions").

4. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, information obtained from the Debtors' management team and advisors, including the A&M team working under my supervision, my review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives, or my opinions based upon my experience and knowledge. If called as a witness, I would testify competently to the statements set forth in this declaration.

I. Introduction.

5. As described in greater detail in the *Declaration of Robert D. Moore, President, Chief Executive Officer, and Chief Financial Officer of Murray Energy Holdings Co., in Support of Chapter 11 Petitions* (the “Moore Declaration”), over the past several years, the Debtors’ businesses have been affected by a sustained downturn in the thermal coal market. In response, the Debtors commenced these chapter 11 cases to implement a comprehensive balance sheet restructuring that will reduce Murray’s debt burden and increase liquidity. To ensure a smooth transition into chapter 11 and limit the operational disruption of these chapter 11 cases, the Debtors filed several First Day Motions. For the reasons described below, the relief sought in each of the First Day Motions, including the approval of the proposed DIP Facility, is in the best interests of the Debtors’ estates, their creditors, and all other parties in interest.

6. Since A&M’s retention, I have overseen the team of A&M professionals that has been helping the Debtors with respect to cash forecasting, the sizing of the potential DIP financing need, the compilation of data and the diligence necessary to draft the First Day Motions, and otherwise prepare for these chapter 11 cases.

7. The Debtors operate in a highly competitive industry, made more competitive by the downturn in the thermal coal market and the shift to natural gas and renewable power generation. Further, as explained below, the Debtors’ liquidity is severely limited. Thus, it is important for the Debtors to secure first-day relief that will allow them to continue to satisfy their employee and operational obligations in the ordinary course, thereby avoiding unnecessary or misplaced employee and customer attrition.

8. As a large coal mining company, the Debtors are required to operate in multiple jurisdictions and navigate the complicated operational and regulatory requirements of each. Any restriction on the Debtors’ ability to operate in the ordinary course could have materially adverse

ramifications that reverberate throughout the Murray operational structure. The relief requested in the First Day Motions is narrowly tailored to avoid any such disruption.

II. Relief Sought in the Debtors' First Day Motions.³

9. I understand that the Bankruptcy Rules permit the Court to grant relief within the first 21 days after the Petition Date where such relief is necessary to avoid immediate and irreparable harm. The relief requested in the First Day Motions is in the best interests of the Debtors, their creditors, and all other parties in interest. I believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief described below could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture.

10. A description of the relief requested in and the facts supporting each of the First Day Motions is set forth below.

A. Administrative Motions.

- (i) Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (the "Joint Administration Motion").

11. Pursuant to the Joint Administration Motion, the Debtors seek entry of an order directing procedural consolidation and joint administration of their related chapter 11 cases and granting related relief.

12. Given the integrated nature of the Debtors' operations, and that virtually all of the Debtors are liable for the Debtors' funded debt, joint administration of these chapter 11 cases will

³ Capitalized terms used but not defined in this section have the meanings assigned to such terms in the applicable First Day Motions.

provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders in these chapter 11 cases will affect each Debtor entity. The entry of an order directing joint administration of these chapter 11 cases will reduce fees and costs by avoiding duplicative filings and objections. Joint administration also will allow the U.S. Trustee and all parties in interest to monitor these chapter 11 cases with greater ease and efficiency.

13. Moreover, joint administration will not adversely affect the Debtors' respective constituencies because this motion seeks only administrative, not substantive, consolidation of the Debtors' estates. Rather, parties in interest will benefit from the cost reductions associated with the joint administration. Accordingly, I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest.

- (ii) Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to (A) File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for each Debtor and (B) Redact Certain Personally Identifiable Information for the Debtors' Employees, (II) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Cases and Other Information, and (III) Granting Related Relief (the "Creditor Matrix Motion").

14. I understand that there are thousands of potential creditors and parties in interest (on a consolidated basis) in the Debtors' chapter 11 cases. Converting the Debtors' computerized information to a format compatible with the matrix requirements would be a burdensome task and would greatly increase the risk of error with respect to information already on computer systems maintained by the Debtors or their agents. The preparation of separate lists of creditors for each Debtor would also be expensive, time consuming, administratively burdensome, and of little incremental benefit. This is especially wasteful where, as here, the Debtors, working together with the Claims and Notice Agent before the Petition Date, have already prepared a single, consolidated list of the Debtors' creditors in electronic format, and many creditors are shared among the Debtor

entities. Thus, the Creditor Matrix will help alleviate administrative burdens, costs, and the possibility of duplicative service.

15. Additionally, service of the single Notice of Commencement will not only avoid confusion among creditors, but will prevent the Debtors' estates from incurring unnecessary costs associated with serving multiple notices to the parties listed on the Debtors' voluminous Creditor Matrix. Finally, although transparency is important to the bankruptcy process, the Bankruptcy Code recognizes a counterbalancing interest in the need to protect the identities and privacy of individuals. In these circumstances, the Debtors respectfully submit that it is appropriate to authorize the Debtors to redact from any documents filed or to be filed with the Court in these chapter 11 cases, including the Creditor Matrix and Schedules and Statements, the home addresses of the Debtors' employees.

16. Accordingly, I believe that the relief requested in the Creditor Matrix Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest.

- (iii) Debtors' Motion for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired leases, and Statements of Financial Affairs, and Rule 2015.3 Financial Reports, and (II) Granting Related Relief (the "Schedules Extension Motion").

17. To prepare the Schedules and Statements, the Debtors must compile information from books, records, and documents relating to the claims of hundreds of creditors, as well as the Debtors' many assets and contracts. Given that there are over 100 Debtor entities, this information is voluminous and located in numerous places throughout the Debtors' organization. Collecting the necessary information requires an enormous expenditure of time and effort on the part of the Debtors, their employees, and their professional advisors in the near term—when these resources would be best used to stabilize the Debtors' business operations. Additionally, because numerous invoices related to prepetition goods and services have not yet been received and entered into the

Debtors' accounting system, it may be some time before the Debtors have access to all of the information required to prepare the Schedules and Statements.

18. Considering the amount of work necessary to complete the schedules and statements coupled with the competing demands on the Debtors' employees and professionals to assist in efforts to stabilize business operations during the initial postpetition period, the Debtors may not be able to complete properly and accurately the Schedules and Statements within the required time period. The extension requested will allow the Debtors to focus their attention on business operations at this critical juncture of these chapter 11 cases. The extension requested is necessary for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders.

19. Additionally, extending the deadline to file the initial 2015.3 Reports also will enable the Debtors to work with their financial advisors and the U.S. Trustee to determine the appropriate nature and scope of the reports and any proposed modifications to the reporting requirements established by Bankruptcy Rule 2015.3. It is my understanding that the relief requested will not prejudice any party in interest as the Debtors will work cooperatively with the U.S. Trustee and any other necessary parties in these chapter 11 cases to provide access to relevant information regarding the business and financial affairs of the Debtors and their non-debtor subsidiaries.

20. Accordingly, I believe that the relief requested in the Schedules Extension Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest.

- (iv) Debtors' Application for Appointment of Prime Clerk LLC as Claims and Noticing Agent (the "Prime Clerk Retention Application").

21. Due to the size of these chapter 11 cases, the Debtors expect that there will be thousands of entities to be noticed. Accordingly, Prime Clerk's engagement is an effective and efficient manner of providing notice to the thousands of creditors and parties in interest of the filing of and developments in the Debtors' chapter 11 cases. Additionally, Prime Clerk will significantly reduce the administrative burden on the clerk's office in connection with the claims administration process, among other things. It is my understanding that Prime Clerk is fully equipped to handle the volume of mailing involved in properly sending the required notices to creditors and other interested parties in these chapter 11 cases and processing the claims filed in the Debtors' cases.

22. Accordingly, I believe that the relief requested in the Prime Clerk Retention Application is in the best interests of the Debtors' estates, their creditors, and all other parties in interest.

- (v) Debtors' Motion Seeking Authority to Implement Certain Notice and Case Management Procedures (the "Case Management Motion").

23. As contemplated by the General Order and the Procedures for Complex Chapter 11 Cases set forth therein, the proposed Case Management Procedures, among other things, (a) establish requirements for filing and serving Court Filings, (b) delineate standards for notices of hearings and agenda letters, (c) fix periodic omnibus hearing dates and articulate mandatory guidelines for the scheduling of hearings and objection deadlines, and (d) limit matters that are required to be heard by the Court.

24. Approval of the Case Management Procedures will promote the efficient and orderly administration of these chapter 11 cases by, among other things, (a) establishing requirements for filing and serving court filings, (b) delineating standards for notices of hearings

and hearing agendas, (c) fixing periodic omnibus hearing dates and articulating mandatory guidelines for the scheduling of hearings and objection deadlines, and (d) limiting matters that are required to be heard by the Court.

25. Given the size and complexity of these chapter 11 cases, I believe that implementing the Case Management Procedures will facilitate the fair and efficient administration of these chapter 11 cases and promote judicial economy. Specifically, the proposed Case Management Procedures will benefit the Debtors, the Court, and all parties in interest by, among other things:

- reducing the need for emergency hearings and requests for expedited relief;
- providing for omnibus hearings for the Court to consider motions, pleadings, applications, objections, and responses thereto;
- assuring prompt and appropriate notice of matters affecting parties' interests;
- allowing for electronic notice pursuant to the Court's electronic filing system;
- providing ample opportunity to parties in interest to prepare for and respond to matters before the Court;
- reducing the substantial administrative and financial burden that would otherwise be placed on the Debtors and other parties in interest who file documents in these chapter 11 cases; and
- reducing the administrative burdens on the Court and the clerk of the Court.

26. Aside from provisions in the Procedures for Complex Chapter 11 Cases appended to the General Order, the Case Management Procedures include additional procedures such as guidelines for electronic service, notice of requests for relief, and the filing and service of adversary proceedings. I believe the inclusion of these additional procedures will further facilitate the fair and efficient administration of these chapter 11 cases.

27. Accordingly, I believe that implementing the Case Management Procedures is in the best interests of the Debtors' estates and should be approved on the terms and conditions described in the Case Management Motion.

B. Financial Motions.

- (vi) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief (the "DIP Motion").

28. Pursuant to the DIP Motion, the Debtors seek approval of the proposed \$440 million DIP Facility. The proposed DIP Facility consists of (a) an approximately \$90 million DIP FILO facility and (b) a \$350 million new money DIP Term Loan (including an immediate \$200 million upon entry of the Interim Order) (the "DIP Facility") provided by the lenders under the Debtors' prepetition superpriority first lien term loans and backstopped by the Ad Hoc Group of Superpriority Term Loan lenders. The DIP Facility will roll-up the approximately \$90 million of the Debtors' prepetition FILO loans outstanding as of the Petition Date and refinance in full the Debtors' revolving facility, each under the prepetition ABL facility (the "Prepetition ABL Facility"). The DIP Facility will provide cash for general working capital purposes, and generally allow the Debtors to address their immediate and pressing liquidity concerns.

29. As of the Petition Date, Murray had very limited liquidity — an amount less than the cash dominion threshold under its Prepetition ABL Facility. In the months prior to the chapter 11 filing, the Debtors have been forced to delay payments and stretch payment terms for many of their vendors to retain sufficient liquidity to operate their businesses. Without a cash infusion at this critical point, the Debtors will be unable to meet their commitments to vendors that provide necessary goods and services, and will suffer irreparable harm to their businesses. The lack of

liquidity could ultimately result in closure of mines and the loss of good paying jobs for the Debtors' employees. The DIP Facility provides the necessary cash to meet immediate operational needs, addresses significant vendor unease, and provides the liquidity for a smooth transition into chapter 11.

a. *The DIP Sizing Process.*

30. Since A&M's retention, I have overseen a team of A&M professionals working to evaluate the Debtors' operations, including determining potential liquidity needs for a chapter 11 case. As part of that analysis, A&M analyzed the Debtors' liquidity forecasts and liquidity position. This analysis was based upon the Debtors' business plan, overlaid with the estimated impact of the commencement of these chapter 11 cases.

31. The Debtors and A&M also considered the adverse market conditions facing the coal industry as a whole. As further described in the Moore Declaration, domestic and international prices for thermal coal continue to decline. The Debtors have responded to these external pressures on EBITDA by proactively reducing their business spend (including by idling some mining operations). Both the downward trend in the coal market and the Debtors' responsive cost saving measures were included in the DIP sizing analysis.

32. As further described elsewhere in this declaration, the Debtors have asked for relief to pay claims to certain vendors whose goods and services are necessary to the Debtors' operations. Specifically, in the Critical Vendors and Lien Claimants Motion (as defined herein), the Debtors have asked for authority to pay the prepetition claims of the Trade Claimants (as defined herein) up to \$50 million in the first 21 days of the chapter 11 cases, and up to \$162.5 million on a final basis. These payments are essential to the success of the Debtors' reorganization and were

included in the DIP sizing. Absent payment to the Trade Claimants, the Debtors' business will suffer irreparable harm.

33. In addition to the above operational considerations, A&M and the Debtors considered the incremental administrative costs of a complex chapter 11 filing with a large number of stakeholders, including multiple lender groups, business entities, unions, and governmental entities, each of whom will likely be represented by counsel.

34. Based on these considerations, the Debtors and their advisors determined that smooth postpetition operations would require incremental liquidity of approximately \$250 million, assuming continued access to its Prepetition ABL Facility, to operate and satisfy all administrative costs and expenses associated with these chapter 11 cases as they come due.

35. The Debtors' liquidity also is severely constrained and subject to significant volatility when it is subject to a borrowing base. More specifically, the Debtors' Prepetition ABL Facility is subject to a prescribed borrowing base formula and judgmental reserves restrictions that made the availability under the Prepetition ABL Facility highly volatile and subject to periodic reductions. Historically, the Debtors were required to recalculate their borrowing base twice per month and, more recently, on a weekly basis to determine the amount of cash available to meet their day-to-day operational needs. In fact, over the past 15 months there have been fluctuations of over \$30 million in borrowing capacity based upon the borrowing base. The fluctuations in the Debtors' borrowing base has limited available liquidity, strained the Debtors' ability to make payments to the vendors and suppliers supporting their businesses, and drained the resources of senior management at critical periods. Even as the Debtors were preparing for these chapter 11 cases, the borrowing base unexpectedly dropped by approximately \$20 million due to the timing of various customer payments and the imposition of a liquidity block required by the Prepetition

ABL Facility lenders. Removal of the borrowing base restrictions on the Debtors' business was a critical consideration as the Debtors considered their DIP financing needs.

b. *Liquidity Challenges and Refinancing the Prepetition ABL Facility.*

36. Without the cash and stability provided by the DIP Facility, I believe that irreparable harm would occur as a result of the Debtors' inability to continue ordinary course operations, which would not only impact revenue generation, but also risk losing the confidence of employees, vendors, and customers.

37. In the chapter 11 context, the Debtors expected their Prepetition ABL Facility lenders to require a similar borrowing base with similar covenants, reporting obligations, and borrowing base protections as part of any adequate protection package or for any agreement to provide an ABL facility on a postpetition basis. A postpetition ABL on such terms would subject the Debtors to many of the same pressures that currently challenge their operations.

38. For these reasons, the Debtors believe that it is in their estates' best interest to remove the ABL borrowing base construct by repaying the revolving facility, which will require approximately \$61 million of the proceeds from the proposed DIP Facility, and rolling up the prepetition FILO facility, which will require approximately \$90 million of the proceeds from the proposed DIP Facility. Refinancing the Prepetition ABL Facility with the proceeds of the DIP Facility will allow the Debtors to replace their Prepetition ABL Facility with a more stable source of cash. As described above, fluctuations in the Prepetition ABL Facility borrowing base were a significant obstacle the Debtors were required to address in their normal course operations, and usually at times the Debtors needed access to liquidity the most. The DIP Facility effectively removes the borrowing base requirement arising under the Prepetition ABL Facility (and applicable provisions in the prepetition FILO facility), thus protecting the Debtors' business

operations from fluctuations in that borrowing base and the resultant effects on the Debtors' liquidity to meet business cash needs.

39. I believe that the DIP Facility's elimination of the fluctuations in the Debtors' available cash is appropriate under the circumstances and will streamline operations for the benefit of all stakeholders. Accordingly, I believe that the proposed DIP Facility should be approved on the terms and conditions described in the DIP Motion.

- (vii) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain Existing Business Forms, and (C) Perform Intercompany Transactions and Pay Prepetition Obligations Related Thereto, and (II) Granting Related Relief (the "Cash Management Motion").

40. In the ordinary course of business, the Debtors operate a sophisticated cash management system to efficiently collect, disburse, and transfer funds generated by their operations, and to facilitate cash management, forecasting, and reporting, including debit, wire, and automated-clearing-house ("ACH") transfers (the "Cash Management System"). As illustrated in the Cash Management System diagram attached as Exhibit 1 to Exhibit A and Exhibit B to the Cash Management Motion, the Cash Management System for the Debtors consists of two largely separate systems that interact as necessary in the ordinary course of the Debtors' business. The two systems correspond to MEC⁴ and certain of its direct and indirect subsidiaries (collectively, and together with MEC excluding Western Kentucky (as defined herein) "Murray Energy," and the associated accounts, the "Murray Energy Accounts") and Debtor Western Kentucky Consolidated Resources, LLC ("Western Kentucky") and certain of its affiliates and

⁴ As of the time of filing, MEC is not a debtor in these chapter 11 cases.

direct subsidiaries⁵ (the “Western Kentucky Accounts,” and collectively with the Murray Energy Accounts, the “Debtors’ Accounts”). The Debtors’ treasury department maintains daily oversight of the Cash Management System and implements cash management controls for entering, processing, and releasing funds. Additionally, the Debtors’ corporate accounting department regularly reconciles the Debtors’ books and records to ensure that all transactions, including Intercompany Transactions, are accounted for properly. Murray South America runs its own cash management system in Colombia.

41. The Cash Management System was organized to facilitate the efficient disbursement of cash to entities related to the Murray Energy Accounts and in light of the Debtors’ prepetition ABL facility (the “Prepetition ABL/FILO Facility”). The Prepetition ABL/FILO Facility is described in greater detail in the First Day Declaration. The entities associated with the Western Kentucky Accounts utilize cash on hand for their working capital and operational needs.

42. The Cash Management System is similar to those commonly employed by businesses comparable in size and scale to the Debtors. Indeed, large multinational businesses use integrated systems to help control funds, ensure cash availability for each entity, and reduce administrative expenses by facilitating the movement of funds among multiple corporate entities. The Cash Management System is vital to the Debtors’ ability to conduct their operations. Any disruption of the Cash Management System would be materially detrimental to the Debtors’ operations, as their businesses require prompt access to cash.

⁵ Specifically, the following entities are associated with Debtor Western Kentucky Consolidated Resources, LLC: Murray Kentucky Energy, Inc.; Western Kentucky Coal Resources, LLC; Western Kentucky Resources Financing, LLC; Western Kentucky Rail Loadout LLC; Western Kentucky Resources, LLC; Western Kentucky River Loadout LLC; The Western Kentucky Coal Company, LLC; The Muhlenberg County Coal Company, LLC; Western Kentucky Land Holding, LLC. All other Debtor entities, except Murray South America, Inc., are associated with the MEC cash management system.

a. *The Cash Management System.*

43. As of the Petition Date, the Cash Management System includes a total of 51 bank accounts (each, a “Bank Account,” and collectively, the “Bank Accounts”). Each Bank Account is identified on Exhibit 2 to Exhibit A attached to the Cash Management Motion. All of the Bank Accounts, except for the Collateral Accounts (as defined below), Brokerage Accounts (as defined below), and one Standalone Account (as defined below),⁶ are held at Huntington National Bank. The Debtors’ Brokerage Accounts are held at Stifel Nicolus & Company and Imperial Capital LLC (the “Brokerage Account Banks”). The Collateral Accounts utilize various financial institutions, including PNC Bank, UBS A.G., First National Bank, BNY Mellon, U.S. Bank, State Street Bank & Trust Co. (Transamerica), Regions Bank, Goldman Sachs Bank USA, Indemnity National Insurance Company, Unified Bank, Zurich Insurance Group, First Commonwealth Bank, CitiBank, and Fifth Third Bank (the “Collateral Account Banks,” and, together with Huntington National Bank and the Brokerage Account Banks, the “Cash Management Banks”).

44. ***Cash Flows from Operations.*** Operational disbursements flow from, and cash generated from coal sales by Murray Energy flows into, an operating account maintained by Murray Energy (the “Murray Energy Operating Account”). The Murray Energy Operating Account is a zero balance account that directly and automatically transfers funds to the concentration account for Murray Energy (the “Murray Energy Concentration Account”) on a daily basis. Although Western Kentucky does not maintain a separate operating account, cash generated from coal sales by Western Kentucky flows directly into a concentration account

⁶ The Debtors’ petty cash Bank Account at Andalex Resources, Inc. is maintained with Cache Valley Bank. This account typically maintains a balance of no greater than \$52,000.

maintained by Western Kentucky (the “Western Kentucky Concentration Account,” and, together with the Murray Energy Concentration Account, the “Concentration Accounts”).⁷

45. Each of the Operating and Concentration Accounts are subject to deposit account control agreements in favor of each of the agents under the Debtors’ prepetition revolving credit agreement (the “Prepetition ABL/FILO Agent,” and the credit agreement, the “Prepetition ABL/FILO Credit Agreement”) and the collateral trustee under the Debtors’ prepetition collateral trust agreement (the “Prepetition Term Debt Trustee”) governing the relative priorities between the Debtors’ prepetition term loans and secured notes (the “Prepetition Term Debt”).

46. Funds in the Murray Energy Concentration Account are used to pay down outstanding revolver amounts in accordance with the terms of the Prepetition ABL/FILO Credit Agreement. Since April 2019, the total cumulative net amount of paydowns under the ABL/FILO facility was approximately \$54 million, which was paid out of the Murray Energy Concentration Account.

47. To fund the Debtors’ ongoing operations, MEC, for itself and/or its subsidiaries, may access undrawn amounts available under the Prepetition ABL/FILO Facility by submitting a Notice of Borrowing, as defined in and submitted in accordance with the ABL Credit Facility (each, a “Draw Notice”). Draw Notices are submitted by MEC on an as-needed basis to pay the Debtors’ operating expenses. Upon receipt of a Draw Notice, the Prepetition ABL/FILO Agent advances funds to the Murray Energy Concentration Account. Funds remain in the Murray Energy Concentration Account until they are transferred to Murray Energy Operating Accounts.

⁷ Additionally, as discussed below, MEC frequently uses coal from Western Kentucky to fulfill orders under coal sale agreements between MEC and counterparties. MEC then reimburses Western Kentucky for the coal used via an intercompany transfer. These transfers are typically made from the Murray Energy Operating Account to the Western Kentucky Concentration Account.

48. The Debtors estimate that their cash receipts from collections at both Murray Energy and Western Kentucky average approximately \$200 million per month in the twelve months prior to August 2019.

49. ***Disbursement Accounts.*** MEC and the Debtors maintain 10 zero balance disbursement accounts (each, a “Disbursement Account,” and collectively, the “Disbursement Accounts”) dedicated to the payment of specific expenses. The Murray Energy Concentration Account directly funds the disbursement accounts of Murray Energy and the Western Kentucky Concentration Account directly funds the disbursement accounts of Western Kentucky. The Disbursement Accounts do not typically carry a cash balance because they are funded directly on an as-needed basis. The Disbursement Accounts are utilized to pay employee and payroll obligations, healthcare expenses, amounts owed to owners of royalty interests, vendors for operating expenses, workers’ compensation expenses, and other expenses in the ordinary course of business.

50. ***Standalone Accounts.*** MEC and the Debtors maintain 12 standalone accounts (each, a “Standalone Account,” and collectively, the “Standalone Accounts”) that are not integrated into the Cash Management System, but instead are segregated accounts used for specific purposes. The Standalone Accounts owned by Murray Energy are funded on an as-needed basis by the Murray Energy Concentration Account and the Standalone Accounts owned by Western Kentucky are funded on an as-needed basis by the Western Kentucky Concentration Account. The Standalone Accounts are, for example, utilized to make certain workers’ compensation disbursements and collect employee flexible spending account deposits that are withheld from paychecks.

51. ***Collateral Accounts.*** MEC and the Debtors maintain 24 accounts (each, a “Collateral Account,” and collectively, the “Collateral Accounts”), which are funded to provide collateral in support of the Debtors’ surety bonds, workers’ compensation obligations, corporate credit cards, and debt obligations, and sit outside of the Cash Management System. The Collateral Accounts are manually funded on an as-needed basis by either the Murray Energy Concentration Account or the Western Kentucky Concentration Account, depending on which entity incurred the obligation being collateralized.⁸

52. ***Brokerage Accounts.*** The Debtors maintain two brokerage accounts (the “Brokerage Accounts”) at Imperial Capital, LLC, and Stifel, Nicolaus & Company. The Brokerage Accounts hold certain of the Debtors’ 11.25% and 11.75% notes and cash paid on account of such notes (the “Armstrong Notes”). The Armstrong Notes were consideration for Murray Energy’s acquisition of 51 percent ownership of Armstrong Energy, Inc., and are being held for the benefit of legacy Armstrong Energy, Inc. noteholders who have yet to claim the proceeds of the acquisition. The Debtors are unable to identify the proper recipients of the Armstrong Notes. As of the Petition Date, the market value of the notes in the Brokerage Accounts is approximately \$40,000, and the accumulated cash interest totals approximately \$225,400. Additionally, as of the Petition Date, the Debtors do not believe that any amounts are owed on account of the maintenance of the Brokerage Accounts.

⁸ The Western Kentucky Concentration Account funds Collateral Accounts for obligations incurred by the following debtor entities: Murray Kentucky Energy, Inc.; Western Kentucky Coal Resources, LLC; Western Kentucky Resources Financing, LLC; Western Kentucky Consolidated Resources, LLC; Western Kentucky Rail Loadout LLC; Western Kentucky Resources, LLC; Western Kentucky River Loadout LLC; The Western Kentucky Coal Company, LLC; The Muhlenberg County Coal Company, LLC; Western Kentucky Land Holding, LLC. The Murray Energy Concentration Account funds Collateral Accounts for obligations incurred by all other debtor entities.

53. **Corporate Credit Cards.** The Debtors utilize 3 corporate credit cards (the “Corporate Credit Cards”) issued by Huntington National Bank in the ordinary course of business to pay for certain miscellaneous, *de minimis* business expenses that require a credit card, such as booking plane flights and paying for hotels for employee travel. The Corporate Credit Cards have a cumulative credit limit of \$400,000 and MEC and the Debtors typically charge approximately \$228,000 per month in the aggregate to the Corporate Credit Cards. Every month, funds from the Murray Energy Operating Account are drawn to pay any outstanding amount to the Corporate Credit Cards. As of the Petition Date MEC and the Debtors owe approximately \$325,000 on account of the Corporate Credit Cards.

b. The Bank Accounts.

54. The Bank Accounts comprising each of the foregoing types of accounts are listed below.⁹

<u>Account Type</u>	<u>Bank Accounts</u>
<u>Concentration Accounts</u>	Murray Energy Account- 6909 Western Kentucky Account - 6442
<u>Operating Account</u>	Murray Energy Account - 6912
<u>Disbursement Accounts</u>	Murray Energy Account - 6954 Murray Energy Account - 6941 Murray Energy Account - 6938 Murray Energy Account - 6925 Murray Energy Account - 7034 Murray Energy Account - 7209 Western Kentucky Account - 6455 Western Kentucky Account - 6471 Western Kentucky Account - 6468 Western Kentucky Account - 6484
<u>Standalone Accounts</u>	Andalax Resources, Inc. Account - 1413

⁹ A detailed description of the Debtors’ payroll, wages, and benefits programs can be found in the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief*, filed contemporaneously herewith.

<u>Account Type</u>	<u>Bank Accounts</u>
	Financial Services Group of Murray Energy Corporation Account - 4146 Murray Energy Account - 6886 Murray Energy Account - 6967 Murray Energy Account - 6899 Murray Energy Account - 7018 Murray Energy Account - 7021 Murray Energy Account - 7212 Murray Energy Account - 2853 Murray Energy Corporation Account - 5436 Murray Energy Corporation Account - 0963 Western Kentucky Account - 6552
<u>Collateral Accounts</u>	Andalex Resources, Inc. Account - 0125 Andalex Resources, Inc. Account - 3013 Canterbury Coal Company Account - 4835 Energy Resources Inc. Account - 1923 Energy Resources Inc. Account - 0815 Maple Creek Mining, Inc. Account - 4790 Maple Creek Mining, Inc. Account - 4791 Maple Creek Mining, Inc. Account - 1024 Maple Creek Mining Account - 0124 Murray American Energy, Inc. Account - 7774 Murray American Energy, Inc. Account - 3370 Murray American Energy, Inc. Account - 7947 Murray Energy Account - 0001 Murray Energy Account - 3479 Murray Energy Account - NA ¹⁰ Murray Energy Account - NA ¹¹ The Ohio Valley Coal Company Account - 6106 The American Coal Company Account - 9162 The American Coal Company Account - 1867 The American Coal Company Account - 8703 The American Coal Company Account - 1892 The American Coal Company Account - 8704 The American Coal Company Account - 1906 The American Coal Company Account - 8206

55. MEC and the Debtors pay their Cash Management Banks, on average, approximately \$17,100 per month in the aggregate on account of fees incurred in connection with the Murray Energy Operating Accounts, Concentration Accounts, Disbursement Accounts, and

¹⁰ MEC's Collateral Account with Goldman Sachs USA does not have an assigned account number.

¹¹ MEC's Collateral Account with Indemnity National Insurance Company does not have an assigned account number.

Standalone Accounts (the “Bank Fees”). As of the Petition Date, I believe that approximately \$38,000 is outstanding on account of prepetition Bank Fees.

56. Huntington National Bank, Fifth Third Bank, PNC Bank, Bank of New York Mellon, CitiBank, and U.S. Bank are designated depositories in the Southern District of Ohio. Although Unified Bank, Cache Valley Bank, and First Commonwealth Bank are not authorized depositories, they are insured by the Federal Deposit Insurance Corporation (“FDIC”) and hold less than the insured limit at the close of each business day. MEC’s and the Debtors’ Collateral Accounts and Brokerage Accounts at Regions Bank, UBS A.G., State Street Bank & Trust Co. (Transamerica), First National Bank, Goldman Sachs USA, Zurich Insurance Group, Indemnity National Insurance Company, Stifel Nicolaus & Company, and Imperial Capital, LLC are not authorized depositories in the Southern District of Ohio and/or hold balances that exceed the FDIC-insured limit. Although these Collateral Account Banks and Brokerage Account Banks are not authorized depositories and/or hold balances above the FDIC-insured limit, they are solely used to secure the MEC’s and the Debtors’ obligations under its surety bonds, workers’ compensation program, and funded debt, and to hold the Armstrong Notes for the benefit of the legacy Armstrong Energy, Inc. noteholders. Moreover, the Collateral Account Banks and Brokerage Account Banks are trustworthy, well-capitalized, and financially stable institutions with strong reputations. I believe that they can maintain the Bank Accounts without jeopardizing any parties in interest and that any funds deposited in any of the Collateral Account Banks or Brokerage Account Banks are secure. Requiring the Debtors to transfer the Collateral Accounts and Brokerage Accounts to a designated authorized depository or for the Collateral Account Banks, and the Brokerage Accounts, LLC to post a bond would place a needless administrative burden on the Debtors and likely impose unnecessary costs on the Debtors’ estates.

c. *Compliance with U.S. Trustee Guidelines as to Business Forms.*

57. The Debtors use a variety of preprinted business forms, including checks, letterhead, correspondence forms, invoices, and other business forms in the ordinary course of business (collectively, the “Business Forms”). The Debtors also maintain books and records to document their financial results and a wide array of necessary operating information, including their profits and expenses.

d. *Intercompany Transactions.*

58. The Debtors maintain business relationships with each other and with non-debtor affiliates and related parties resulting in intercompany receivables and payables in the ordinary course of business (collectively, the “Intercompany Claims”). In addition to the Intercompany Claims between MEC and the Murray Energy group and entities within the Murray Energy group, the Intercompany Claims primarily arise between Western Kentucky, Murray South America, Inc. and its Debtor and non-debtor subsidiaries¹² (“Murray South America”), non-debtor Foresight Reserves LP (together with its wholly-owned subsidiaries “Reserves”), and Foresight Energy, L.P. (together with its general partner and direct and indirect subsidiaries, “FELP,” and together with Reserves, “Foresight”), and non-debtor Murray Metallurgical Coal Holdings, LLC and its subsidiaries¹³ (“Murray Met”), and non-debtor Javelin Global Commodities Holdings LLP¹⁴

¹² Murray South America’s non-debtor subsidiaries are: NRI Cayman Ltd.; CNR III Ltd.; CNR III Ltd. Sucursal Colombia; Natural Resources Investments S.I.; Sociedad Portuaria Rio Cordoba S.A.; CNR Marketing Limited; C.I. Colombian Natural Resources I S.A.S.; CNR Transport S.A.S.; Colombian Natural Resources II S.A.S.; and Fundacion Colombian Natural Resources I. Murray South America’s Debtor subsidiary is Murray Colombian Resources, LLC.

¹³ Murray Met’s direct subsidiaries are: Maple Eagle Mining, LLC; Murray Alabama Minerals, LLC; Murray Maple Eagle Coal, LLC; Murray Alabama Coal, LLC; and Murray Oak Grove Coal, LLC.

¹⁴ Javelin Investment Holdings LLC is controlled by Tomahawk Investment Group LLC, which in turn is owned and/or controlled by certain indirect members of Javelin. Javelin Investment Holdings LLC owns a minority stake in Murray Met, which in 2019 acquired the Oak Grove, Seminole Alabama, and Maple Eagle Mining Complexes (the “Mission Assets”) from Mission Coal Company, LLC. The Mission Assets are now held at the Murray Met entities.

(together with its direct and indirect subsidiaries “Javelin”). Each of Murray Energy, Western Kentucky, Murray South America, and Murray Met pay most or all of their own operating expenses with cash generated from operations. Javelin and Foresight, on the other hand, generally operate independently and do not receive any operational funding from the Debtors, but do maintain strategic business relationships that result in Intercompany Transactions.

59. Intercompany Transactions giving rise to Intercompany Claims are frequently conducted in the ordinary course of business among Debtors as well as between Debtors and Foresight, Murray Met, and Javelin. The Intercompany Claims generally arise from (i) management or services fees arising from management services agreements, (ii) intercompany payables and receivables generated from payment of certain operating expenses by Murray Energy on behalf of its Debtor affiliates (in accordance with shared services agreements, where applicable), (iii) payables and receivables on account of coal sales (in accordance with shared services agreements, where applicable), (iv) payables and receivables on account of lease and overriding royalty agreements, and (v) payables and receivables on account of services performed or goods supplied by one Debtor entity for another Debtor entity or non-debtor affiliate or related (or *vice versa*). Certain Intercompany Claims are settled on a regular basis. The Intercompany Claims are reflected as receivables and payables, as applicable, in MEC’s or the respective Debtor’s or non-debtor affiliate’s accounting system, and generally paid and settled when due in the normal course of business. Accordingly, the Debtors can ascertain, trace, and account for all Intercompany Transactions, and will be able to do so on a postpetition basis.

60. The Debtors’ Intercompany Transactions among MEC, the Debtors and their non-debtor affiliates and related parties generally fall into the categories described below.

e. *Intercompany Transactions Among Debtors.*

61. In the ordinary course of business, MEC, as the parent of substantially all of the Debtor entities, maintains various business relationships with, and performs certain services for, other Debtor entities. Such Intercompany Transactions generally fall into the following categories:

- Operating Expenses/Corporate Overhead: Operating expenses and corporate overhead expenses incurred by the various Murray Energy entities are generally paid by MEC out of the Murray Energy Operating Account. Western Kentucky typically pays its own operating expenses out of its Concentration Accounts. The Debtors' corporate accounting department records the resulting payables and receivables in the Debtors' accounting system.
- Payroll: As described more fully in the Debtors' wages motion, filed contemporaneously with this motion, each operating entity has its own employees, but MEC processes all of the Debtors' employees' wages except for employees of Western Kentucky. Murray Energy and Western Kentucky each fund a Disbursement Account specifically designated for payroll from the Murray Energy Operating Account or Western Kentucky Concentration Account, as applicable, and issue checks and ACH transfers to their respective employees from the applicable account. The Debtors' corporate accounting department records the resulting payables and receivables in the Debtors' accounting system.
- Accounts Payable: MEC processes all of the Debtors' accounts payable in the ordinary course of business on behalf of the operating entities, including taxes, payments to holders of royalty interests, and other accounts payable. The Debtors' corporate accounting department records the resulting payables and receivables in the Debtors' accounting system.
- Capital Expenditures: MEC acts as a governor on all major capital expenditures and approves all projects at the respective operating entities. MEC then makes payments from the Murray Energy Operating Account to fund such capital expenditures to the extent they arise at Murray Energy entities. To the extent that capital expenditures are made at Western Kentucky, such capital expenditures are typically funded from the Western Kentucky Concentration Account. The Debtors' corporate accounting department records the resulting payables and receivables in the Debtors' accounting system.
- Receipt of Coal Sale Proceeds: Except for coal sale agreements at Western Kentucky, all coal sale proceeds from Debtor entity coal sales are received by the Murray Energy Operating Account, regardless of which mine the coal is extracted from or which Debtor entity is party to the coal sale contract. Proceeds from coal sales at Western Kentucky are received by the Western Kentucky Concentration Account. The Debtors' corporate accounting department records the resulting payables and receivables in the Debtors' accounting system.

- Services by Debtor Entities: Certain Debtor entities operate stand-alone businesses that provide goods and services such as machine repair work, parts supply, longwall rebuilds, shipping and docking services, and loading services. These entities provide goods and services to other Debtor entities or non-debtor affiliates. That is, rather than the Debtors' mining entities utilizing third-party vendors to, for example, perform a longwall rebuild or machine repair work, such Debtor mining entity typically engages with a Debtor entity who performs those services. In these cases, ordinary course invoices and receipts are generated between the Debtor entities, and the Debtors' corporate accounting department records the resulting payables and receivables in the Debtors' accounting system.

62. *Intercompany Coal Sale Transactions with Western Kentucky.* As the counterparty to a substantial number of the Debtors' coal sales agreements, Murray Energy frequently engages in ordinary course Intercompany Transactions with Western Kentucky to satisfy delivery obligations under Murray Energy's coal sale agreements. In these circumstances, Western Kentucky "sells" the coal to Murray Energy at the applicable contract price ("At-Contract Intercompany Coal Sales"), and a corresponding account payable is generated at Murray Energy in favor of Western Kentucky.¹⁵ The At-Contract Intercompany Coal Sales with Western Kentucky are a valuable synergy for the Debtors' businesses, as they (a) insulate Murray Energy and Western Kentucky from the volatility of the spot market from which Murray Energy and Western Kentucky would otherwise have to either source coal to fill orders or offload excess inventory, (b) allow Murray Energy and Western Kentucky to purchase each other's available supply to satisfy their respective customers' demands, and (c) allow Murray Energy and Western Kentucky to deliver mixes of coal that best meet customers' needs and optimize operational and logistical efficiencies. Murray Energy utilizes the Murray Energy Operating Account to collect the ultimate third-party purchaser's coal payment on Western Kentucky's behalf and then transfers

¹⁵ Although MEC could engage in similar transactions with Murray Met, such transactions have not historically been entered into since MEC purchased the Mission Assets just earlier this year.

the payment to the Western Kentucky Concentration Account.¹⁶ As such, where Western Kentucky sells coal under Murray Energy contracts, the sale is in substance a sale to the third-party purchaser, with Murray Energy acting as an intermediary for the third-party purchaser's payment to Western Kentucky. Even though Western Kentucky is fulfilling Murray Energy's contracts in these instances, Murray Energy remains the contracting party and is ultimately responsible for the obligations under the applicable agreements.

63. As of the Petition Date, Murray Energy owes Western Kentucky \$2.8 million on account of At-Contract Intercompany Coal Sales.

64. ***Western Kentucky MSA.*** The Debtors engage in Intercompany Transactions with Western Kentucky pursuant to a Management Services Agreement between Debtor Murray Kentucky Energy Services, Inc. and Debtor Western Kentucky Consolidated Resources, LLC, effective as of February 16, 2018 (the "Western Kentucky MSA"). Pursuant to the Western Kentucky MSA, the Debtors manage manages all aspects of Western Kentucky's mining operations, including (a) coordination and management of employees and contractors at the mines, (b) modeling and engineering services, (c) sales and marketing services, (d) logistics management, (e) human resources and employee-related functions, (f) provision of information technology systems and related services, (g) compliance and investor relations services, (h) financial/accounting and loan related services, and (i) legal services. In exchange, Western Kentucky is obligated to pay a quarterly management fee of \$500,000. In most cases, expenses incurred by Western Kentucky are paid directly from the Western Kentucky Concentration Account. Where MEC incurs expenses on behalf of Western Kentucky, the Debtors invoice

¹⁶ Where Western Kentucky sells its coal directly to third-party purchasers, amounts received on account of such sale flow directly into the Western Kentucky Concentration Account and there is typically no Intercompany Claim generated.

Western Kentucky for such expenses and, at the end of the quarter, Western Kentucky transfers funds from the Western Kentucky Concentration Account to the Murray Energy Operating Account to reimburse the Debtors for all such expenses incurred.

65. As of the Petition Date, Western Kentucky owes MEC \$5.4 million on account of quarterly management fees, other services, and reimbursable expenses pursuant to the Western Kentucky MSA.

f. *Intercompany Transactions with Non-Debtor Foresight.*

66. In the ordinary course of business, Murray Energy and Foresight engage in Intercompany Transactions on account of (a) At-Contract Intercompany Coal Sales, (b) payment of fees and expenses under the Third Amended and Restated Management Services Agreement between Murray American Coal, Inc., and Foresight Energy GP LLC, the general partner of FELP, effective as of March 28, 2017 (the “FELP MSA”), and the Management and Coal Development Agreement between Murray American Coal Inc. and Colt LLC, a subsidiary of Reserves (“Colt”), dated April 16, 2015 (the “Colt MSA,” and together with the FELP MSA, the “Foresight MSAs”), (c) payment of intercompany royalties under the American Energy Corporation Real Estate Lease Agreement, dated April 16, 2015 (the “Lease Agreement”) and American Energy Corporation Overriding Royalty Agreement, dated April 16, 2015 (the “Overriding Royalty Agreement,” and together with the Transport Lease, the “Lease and Overriding Royalty Agreements”), and (d) other ordinary course transactions, such as the purchase of equipment and supplies and rebuilding services, sharing of transportation infrastructure and third party contracted capacity, and combining major purchase orders to reap the benefits of volume rebates and unit price discounts from key vendors (together, the “Ordinary Course Foresight Transactions”).

67. ***Intercompany Coal Sale Transactions with FELP.*** Pursuant to their strategic partnership in connection with the Foresight MSA and to the benefit of each of Murray Energy

and FELP, Murray Energy and FELP each from time to time fulfill coal sales under each other's respective coal sale agreements. Similar to Intercompany Transaction between Murray Energy and Western Kentucky, the At-Contract Intercompany Sales between FELP and MEC provide a valuable synergy for both Murray Energy's and FELP's businesses, as they (a) insulate Murray Energy and FELP from the volatility of the spot market from which they would otherwise have to either source coal to fill orders or offload excess inventory, (b) allow Murray Energy and FELP to purchase each other's available supply to satisfy their respective customers' demands, and (c) allow Murray Energy and FELP to deliver mixes of coal that best meet customers' needs and optimize operational and logistical efficiencies. Where FELP sells coal under Murray Energy contracts, Murray Energy utilizes the Murray Energy Operating Account to collect the ultimate third-party purchaser's coal payment on FELP's behalf and then transfers the payment to FELP. As such, the sale is in substance a sale to the third-party purchaser, with Murray Energy simply acting as an intermediary for the third-party purchaser's payment to FELP. Likewise, where Murray Energy sells coal under FELP contracts, FELP collects the ultimate third-party purchaser's coal payment on Murray Energy's behalf and then transfers the payment to the Murray Energy Operating Account. As such, the sale is in substance a sale to the third-party purchaser, with FELP acting as an intermediary for the third-party purchaser's payment to Murray Energy. Even though FELP is fulfilling Murray Energy's contracts in these instances, Murray Energy remains the contracting party and is ultimately responsible for the obligations under the applicable agreements. As of the Petition Date, Murray Energy owes FELP approximately \$6.2 million on account of At-Contract Intercompany Coal Sales.

68. Additionally, Western Kentucky is also the beneficiary of coal sale contracts with FELP and Murray Met for which it holds Intercompany Claims against FELP and Murray Met.

As of the Petition Date, no amounts are outstanding between Western Kentucky and Foresight. There are no outstanding Intercompany Claims for Murray Met against Western Kentucky.

69. ***Foresight MSAs.*** Murray Energy engages in Intercompany Transactions with Foresight pursuant to the Foresight MSAs. Pursuant to the FELP MSA, Murray Energy manages all aspects of FELP's mining operations, including (a) coordination and management of employees and contractors at the mines, (b) modeling and engineering services, (c) coal sales and related marketing services, (d) logistics management, (e) human resources and employee-related functions, (f) provision of information technology systems and related services, (g) compliance and investor relations services, (h) financial/accounting and loan related services, and (i) legal services. In exchange, FELP is obligated to pay a quarterly management fee of \$5,000,000. When Murray Energy incurs expenses on behalf of FELP, Murray Energy invoices FELP for such expenses and, at the end of the quarter, FELP transfers funds to the Murray Energy Operating Account to reimburse Murray Energy for such expenses incurred in the preceding quarter, subject to the terms and conditions of the FELP MSA. Pursuant to the Colt MSA, Murray Energy provides mine plan development and management services to six coal reserves controlled by Colt. Such services include, but are not limited to, administration, engineering, and curation services. In exchange, Colt pays Murray Energy an annual amount, paid in advance, of approximately \$16 million per year, with the next payment due on December 31, 2019 in the amount of \$11.6 million, stepping down on a go-forward basis. Under the FELP MSA, FELP owes Murray Energy approximately \$1.6 million on account of quarterly management fees, and Murray Energy owes FELP approximately \$200,000 on account of SG&A reimbursement, each as of the Petition Date. Additionally, as of the Petition Date, I do not believe that there are any amounts owed between Colt and Murray Energy on account of services provided pursuant to the Colt MSA.

70. *Lease and Overriding Royalty Agreements.* Murray Energy engages in Intercompany Transactions with Foresight pursuant to the Lease and Royalty Agreements. Pursuant to the Lease Agreement, Murray Energy pays Foresight intercompany royalty payments in the amount of \$1.15 – \$1.75/ton for processed coal at certain mines. The initial term of the Lease Agreement is 15 years. Pursuant to the Overriding Royalty Agreement, Murray Energy pays Foresight intercompany royalty payments in the amount of \$0.30 – \$0.50/ton for each ton of coal sold from certain coal reserves. The initial term of the Overriding Royalty Agreement is 18 years. As of the Petition Date, the Murray Energy owes Foresight approximately \$1.1 million on account of the Lease and Overriding Royalty Agreements.

71. Additionally, the Debtors and Colt are party to certain mineral leases at the Williamson, Hillsboro, and Macoupin mines. Specifically, the Debtors and Colt are party to one mineral lease at the Williamson mine, the terms of which include a 10-year term expiring on August 12, 2020, with six 5-year renewal options, and royalty payments owed to the Debtors in the amount of \$3.40 per ton or 8 percent of gross sales (subject to a \$2 million annual minimum). At the Hillsboro mine, the Debtors and Colt are party to two 5-year leases expiring on August 12, 2020, each with seven 5-year renewal options and royalty payments owed to the Debtors in the amount of \$3.40 per ton or 8 percent of gross sales (subject to a \$4 million annual minimum).¹⁷ Lastly, at the Macoupin mine, the Debtors and Colt are party to three 10-year leases, two of which expire on August 12, 2020, and one of which expires on June 1, 2022, with each providing for six 5-year renewal options and royalty amounts owed to the Debtors in the amount of \$3.40 per ton

¹⁷ These reserves are currently not being mined, and minimum royalty obligations do not commence for approximately 10 years.

or 8 percent of gross sales (subject to a \$2 million annual minimum)¹⁸ (collectively, the “Colt Mineral Leases”). As of the Petition, no amounts are owed between Colt and the Debtors on account of the Colt Mineral Leases.

72. ***Ordinary Course Foresight Transactions.*** Murray Energy and Foresight engage in other miscellaneous Intercompany Transactions through contractual services or operational practices. In each case, both the Debtors and Foresight realize significant economic and operational benefits on account of such transactions. The Ordinary Course Foresight Transactions include:

- **Ordinary Course Purchasing of Building and Equipment Services:** As described above, certain of the Debtors operate standalone businesses that accept orders or deliver services from Debtors and non-debtor affiliates. Foresight likewise has similar businesses within its corporate family that provide certain goods and services to Debtors and non-debtor affiliates. From time to time, certain Debtors may do business with such Foresight entities and *vice versa*. Each such transaction is invoiced and recorded in the Debtors’ books and records in the same manner as any other transaction.
- **Sharing of Transportation Infrastructure:** The Debtors and Foresight have the ability to utilize each other’s transportation networks and contracted capacity with third party providers, some of which are take-or-pay in nature. In addition to generating operational efficiencies and enabling both the Debtors and Foresight to realize cost savings, such sharing provides access to rail, barge, and transloading facilities that may not otherwise be available to Foresight or the Debtors independently. To the extent the Debtors or Foresight utilize the capacity under each other’s transportation networks, each party reimburses the other at cost.
- **Combined Purchasing:** From time to time, the Debtors and Foresight enter into certain procurement transactions, jointly to combine scale and increase purchasing leverage as compared to their respective standalone companies. Combined purchasing provides significant cost savings to both the Debtors and Foresight in the form of volume rebates and unit price discounts from key vendors.

¹⁸ These reserves are currently not being mined, and minimum royalty obligations do not commence for approximately 10 years.

73. As of the Petition Date, Murray Energy estimate that, on account of the Ordinary Course Foresight Transactions, no amounts are owed by the Debtors to Foresight, and Foresight owes MEC approximately \$900,000.

g. *Intercompany Transactions with Murray South America.*

74. The extent of the Intercompany Transactions with Murray South America is far more limited than with other Intercompany Transactions, as the international nature of Murray South America's business requires that the foreign debtor and non-debtor subsidiaries have an independent management team, cash management system, and system for processing and paying local vendor invoices. As a result, there is no management services agreement with Murray South America, and the Intercompany Transactions between the Debtors and Murray South America are mainly limited to periodic dividends declared by Murray South America to the Debtors and payroll disbursements made to a single expatriate employee employed by the Debtors, but who works at Murray South America's facilities (the "Expat"). As of the Petition Date, I believe that a minimal amount is outstanding on account of amounts owed to the Expat.

h. *Intercompany Transactions with Non-Debtor Murray Met.*

75. Similar to Western Kentucky, MEC engages in Intercompany Transactions with non-debtor Murray Met related to (a) transactions related to a Management Services Agreement between Murray Energy Corporation and Murray Met Coal Holdings, LLC (the "Murray Met MSA"), effective as of April 29, 2019, and (b) ordinary course intercompany transactions similar to those with Debtor entities, which include payment of operating expenses and corporate overhead expenses incurred by Murray Met, funding payroll, processing of accounts receivable, and management and funding of capital expenditures.

76. ***The Murray Met MSA.*** MEC engages in Intercompany Transactions with Murray Met pursuant to the Murray Met MSA. In accordance the Murray Met MSA, MEC manages all

aspects of the operations at Murray Met's mining operations, including (a) coordination and management of employees and contractors at the mines, (b) modeling and engineering services, (c) sales and marketing services, (d) logistics management, (e) human resources and employee-related functions, (f) provision of information technology systems and related services, (g) compliance and investor relations services, (h) financial/accounting and loan related services, and (i) legal services. In exchange, Murray Met is obligated to pay a quarterly management fee of \$1,000,000. Where MEC incurs expenses on behalf of Murray Met, MEC invoices Murray Met for such expenses and, at the end of the quarter, Murray Met transfers funds to the Murray Energy Operating Account to reimburse MEC for such expenses incurred, subject to the terms and conditions of the Murray Met MSA. As of the Petition Date, Murray Met owes MEC \$10.9 million on account of Intercompany Claims related to quarterly management services fees pursuant to the Murray Met MSA, reimbursement of costs and expenses under the MSA, and other services.

i. *Importance of Intercompany Transactions.*

77. The Intercompany Transactions are an essential component of the Debtors' operations and centralized Cash Management System. The Intercompany Transactions generate operational efficiencies, increase operational flexibility, provide significant cost savings, and improve the market position of both the Debtors and their non-debtor affiliates, all of which benefit the Debtors' estates. Any interruption of the Intercompany Transactions would severely disrupt the Debtors' operations and result in great harm to the Debtors' estates and their stakeholders. Accordingly, the Debtors seek authority—and, to the extent applicable, relief from the automatic stay—to continue the Intercompany Transactions in the ordinary course of business on a postpetition basis, in a manner substantially consistent with the Debtors' past practices, and to pay any prepetition amounts owed on account of Intercompany Claims between Debtors and non-debtor affiliates, subject in all respects to the terms of the Debtors' postpetition financing

facility (any order entered by the court approving the Debtors' entry into such postpetition financing facility, the "DIP Order").¹⁹

78. Requiring the Debtors to adopt a new, segmented cash management system during these chapter 11 cases would be expensive, burdensome, and unnecessarily disruptive to the Debtors' operations. Importantly, the Cash Management System provides the Debtors with the ability to quickly track and report the location and amount of funds, which, in turn, allows management to track and control such funds, ensure cash availability, and reduce administrative costs through a centralized method of coordinating the collection and movement of funds. Any disruption of the Cash Management System could have a negative effect on the Debtors' restructuring efforts. Indeed, absent the relief requested in the Cash Management Motion, requiring the Debtors to adopt a new, segmented cash management system would cause the Debtors' operations to grind to a halt, jeopardizing the Debtors' business enterprise. By contrast, maintaining the current Cash Management System will facilitate the Debtors' transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies. Finally, maintaining the current Cash Management System will allow the Debtors' treasury and accounting employees to focus on their daily responsibilities.

79. I do not believe that parties in interest will not be harmed by the Debtors' continued use of the present Cash Management System, including maintenance of the Bank Accounts and the Intercompany Transactions, because the Debtors have appropriate mechanisms to ensure that unauthorized payments will not be made on account of prepetition obligations. Specifically, with

¹⁹ The Cash Management Motion provides an overview of the Debtors' typical Intercompany Transactions. The relief requested therein is applicable with respect to all Intercompany Transactions and is not limited to those Intercompany Transactions described in the Cash Management Motion. To the extent that there are any outstanding prepetition obligations related to Intercompany Transactions not described therein, the Debtors seek authority to honor such obligations.

the assistance of their advisors, the Debtors have implemented internal control procedures that prohibit payments on account of prepetition debts without the prior approval of each of the Debtors' respective treasury departments. In light of such protective measures, the Debtors submit that maintaining the Cash Management System is in the best interest of the Debtors' estates and creditors.

80. If the Debtors' ability to conduct transactions by these methods is impaired, the Debtors may be unable to perform under certain contracts, and payments to vendors could be delayed, resulting in unnecessary disruption to their business operations and the incurrence of additional costs. The Debtors respectfully submit that such relief is reasonable and appropriate because the Cash Management Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

81. At any given time, there may be prepetition amounts outstanding on account of the Cash Management System such as Bank Fees, amounts due under the Credit Cards, and Intercompany Claims. Any non-payment of prepetition amounts owed could cause serious disruptions to the Debtors' estates.

82. The Debtors' continued use of the Cash Management System, including payment of prepetition Bank Fees, amounts due on account of the Credit Cards, and Intercompany Claims, will facilitate their transition into chapter 11 by, among other things, avoiding administrative inefficiencies and expenses and minimizing delays in the payment of postpetition amounts due. As described above, the Debtors in the ordinary course of business engage in Intercompany Transaction with Debtor and non-debtor affiliates, which are an essential component of the Debtors' operations and centralized Cash Management System. Any interruption of the Intercompany Transactions, or non-payment of prepetition amounts due in connection with the

Cash Management System, would severely disrupt the Debtors' operations to the detriment of Debtors and their estates. Moreover, the Debtors expect their non-debtor affiliates to continue to honor their obligations to the Debtors on account of Intercompany Claims.

83. Given the complexity of the Debtors' business operations, I believe that any disruption to the Cash Management Systems could impede a successful reorganization of the Debtors' businesses. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates and will enable the Debtors to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Cash Management Motion should be granted.

- (viii) Debtors' Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief (the "NOL Motion").

84. As of December 31, 2018, the Debtors estimate that they have approximately \$645.9 million of federal NOLs and \$304.8 million of disallowed interest carryforwards (together with certain other tax attributes, the "Tax Attributes"). The Debtors may generate additional Tax Attributes in the 2019 tax year. The Tax Attributes are potentially of significant value to the Debtors and their estates because the Debtors may be able to carry forward certain Tax Attributes to offset future taxable income or directly offset federal tax liability in future years. Vtally, such Tax Attributes may also be utilized by the Debtors to offset any taxable income or federal tax liability generated by transactions consummated during these chapter 11 cases. Accordingly, the value of the Tax Attributes will inure to the benefit of all of the Debtors' stakeholders, and any loss of the Tax Attributes, including during the first month of these chapter 11 cases, could cause significant and irreparable damage to the Debtors' estates and stakeholders.

85. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the NOL Motion should be granted.

C. Operational Motions.

- (ix) Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Payment of (A) Critical Vendors, (B) Lien Claimants, (C) 503(B)(9) Claimants, and (D) Royalty and Leasehold Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief (the "Critical Vendors and Lienholders Motion").

86. The Debtors seek entry of interim and final orders (a) authorizing the Debtors to pay in the ordinary course of business certain prepetition claims held by certain (i) Critical Vendors, (ii) Lien Claimants, (iii) Shippers, and (iv) 503(b)(9) Claimants (each as defined herein, and collectively, the "Trade Claimants"), in an amount not to exceed \$50.0 million on an interim basis and \$162.5 million on a final basis, and (v) Royalty and Leasehold Claimants (as defined herein), in an amount not to exceed \$2.1 million on an interim basis and \$8.8 million on a final basis, (b) granting administrative expense priority status of Outstanding Orders (as defined herein) after postpetition delivery of goods, and (c) granting related relief.

87. With the assistance of A&M and their other advisors, the Debtors have spent significant time reviewing and analyzing their books and records, consulting operations managers and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable law, regulations, and historical practice to identify certain critical business relationships and suppliers of goods and services—the loss of which would immediately and irreparably harm their businesses. As part of this analysis, a number of factors were considered, including:

- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;
- whether a vendor is a sole-source, limited-source, or high-volume supplier of goods or services critical to the Debtors' business operations;

- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;
- whether alternative vendors are available that can provide the requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- the degree to which replacement costs (including, pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor;
- the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through use of the tools available in these chapter 11 cases;
- the regional location of vendors with respect to the location of the Debtors' mines and other operations;
- vendors required to address safety / regulatory or compliance related issues; and
- whether failure to pay a particular vendor could result in contraction of trade terms.

a. *The Debtors' Trade Claimants.*

88. The Debtors' ability to extract, process, and deliver coal in a safe and timely manner is critically important to their financial performance and depends on their prompt and continuous receipt of a wide range of goods and services. Given the highly specialized nature of the supplies and materials used in extracting and processing coal and the coal mining industry generally, the Debtors rely on specific vendors, suppliers, consultants, and shippers to provide the Debtors with goods and services necessary for the Debtors' business to function properly and to ensure safe mining conditions and full compliance with all applicable federal and state rules and regulations. The vendors, suppliers, consultants, and shippers that can service the Debtors' supply and repair needs are limited in number.

89. Moreover, the Debtors routinely transport coal from their mines to their customers by rail, barge, or truck. Any disruption to the Debtors' supply and transport network would have an immediate and substantial negative impact on the Debtors' business. Fast and efficient transportation is necessary for the Debtors' successful operations, not only to avoid a back-up of excess inventory, but also to maximize the revenue from the coal shipments. The goods and services provided by the Debtors' vendors, suppliers, consultants, and shippers are therefore essential to the day-to-day operations of the Debtors' business.

90. As the Debtors' financial performance deteriorated more rapidly during the months preceding the Petition Date, the Debtors began to stretch payment terms for most vendors, suppliers, consultants, and shippers to preserve liquidity for operations and for the payment of goods and services that are necessary to ensure safe mining operations. These prepetition efforts have resulted in the Debtors owing approximately \$343 million in aggregate outstanding accounts payable as of the Petition Date. In light of the Debtors' prepetition financial condition, certain vendors, suppliers, consultants, and shippers imposed additional commercial requirements on the Debtors as a condition of continued business and implemented onerous trade terms due to the Debtors' weakened liquidity position.

91. The relief requested therein is narrowly tailored to facilitate the Debtors' restructuring efforts. By contrast, the Debtors will suffer irreparable harm if essential goods and services are not provided by the Trade Claimants. Moreover, the Debtors cannot take the material risk that the Trade Claimants will refuse to perform postpetition if their prepetition claims are not paid. Although the Debtors have historically negotiated favorable terms with their vendors, certain Trade Claimants may refuse to continue working with the Debtors in the absence of payment on the Trade Claims.

92. While the Debtors typically enjoy good working relationships with the Trade Claimants, there are a limited number of vendors or service providers who can supply the Debtors with a quantity and quality of goods and services to meet their operational needs. This provides such Trade Claimants with considerable bargaining power in the event of non-payment by the Debtors. At this critical time in these chapter 11 cases, the loss of the Trade Claimants would significantly impair the Debtors' ability to maximize the value of their estates for the benefit of all stakeholders.

93. Given the importance of the Debtors' vendors, suppliers, consultants, and shippers to the Debtors' business enterprise, the Debtors determined that it was necessary and prudent to identify the vendors, suppliers, consultants, and shippers that are most important to the Debtors' go-forward operations. After a thorough review across all mining operations and diligence regarding potential alternative vendors, suppliers, consultants, and shippers, the Debtors determined, in the exercise of their business judgment, that goods and services provided by the Trade Claimants, and the ability to pay a portion of the Trade Claims, are necessary at this critical juncture to the success of these chapter 11 cases, avoid irreparable harm to the Debtors' business, preserve the value of the Debtors' estates, and remain a going-concern.

b. *Critical Vendors.*

94. Certain of the Debtors' vendors (collectively, the "Critical Vendors," and their claims, the "Critical Vendor Claims") provide goods and services that are necessary to the Debtors' business operations. Many of the Critical Vendors are sole-source or limited-source suppliers or service providers or provide a material economic or operational advantage when compared to other available vendors and service providers.

95. In summary, the Debtors' process balanced the need to ensure that these chapter 11 cases do not disrupt their operations, adversely affect their market share, or injure their customer

relationships, with the need to limit the expenditure of estate resources. To that end, the Debtors have undertaken a lengthy process to ensure that the Critical Vendors are vital to the Debtors' ongoing operations. The Debtors intend to pay the Trade Claims only to the extent necessary to avoid disruption of the Debtors' supply chain and to preserve their operations on a go-forward basis. Paying targeted Critical Vendor Claims renders a benefit to the Debtors' estates both monetarily and operationally by preserving liquidity and enabling the Debtors to operate smoothly during the chapter 11 cases.

96. The Debtors' Critical Vendors comprise the following categories: (a) Safety and Regulatory Compliance Suppliers and Service Providers; (b) Equipment and Parts Suppliers and Service Providers; (c) Materials Suppliers and Service Providers; and (d) Repair and Maintenance Service Providers. Each category is discussed below.

(i) Safety and Regulatory Compliance Suppliers and Service Providers.

97. Mine safety is a preeminent concern for the Debtors. To ensure their employees' safety and comply with a broad array of federal and state regulations, including rules and regulations promulgated by the Mine Safety and Health Administration ("MSHA"), the Debtors contract with certain vendors that provide specialized equipment and services to maintain safe working conditions at their mines. For example, the Debtors must purchase specialized products for roof and other structural supports that meet specific regulatory standards to mitigate the risk of collapse. The Debtors also must purchase specialized operating equipment, such as miner tracking systems, ventilation components, and fire suppression supplies to comply with federal and state safety regulations.

98. Because of the industry-specific nature of these and similar goods and services, as well as the strict regulatory conditions under which the vendors and the Debtors operate, the Debtors work with a limited number of safety and regulatory compliance suppliers and service

providers and there are few, if any, ready substitutes in the market to meet the Debtors' demands. Thus, if the Debtors were suddenly forced to change these and similar vendors, they may be forced to suspend operations at their mines due to their inability to meet regulatory requirements while they searched for qualified replacements. For example, replacing the Debtors' structural support vendors would require the Debtors and their employees to expend significant time and resources in revising their complex mine structural plans, resubmitting such plans to regulators, and awaiting regulatory approval. Such delays and increased expenses could prove disastrous for the Debtors' continued operations and significantly decrease the value of their estates.

(ii) Equipment and Parts Suppliers and Service Providers.

99. To conduct their day-to-day business of mining coal, the Debtors require a continuous and reliable supply of equipment and parts that are unique to their mining operations. Examples of such equipment includes shearers, longwall conveyers, power loaders, crushers, locomotives, diesel engines, and all related parts. Although the Debtors routinely purchase new equipment for their mining operations, wear and tear on existing equipment creates suboptimal performance over time, forcing the Debtors to continually stock, maintain, or replace the most in demand parts and components in the ordinary course of business. Given the unique and highly technical nature of the coal mining industry,²⁰ much of the Debtors' mining equipment and parts can only be purchased from the original equipment manufacturer or certain after-market manufacturers and suppliers, leaving the Debtors without readily available replacement or substitute vendors.

²⁰ For instance, most of the Debtors' mining equipment is designed, built, and approved by federal regulators according to requirements established by MSHA.

100. The specialized equipment and parts that the Debtors require to continue their mining operations and remain competitive are only available from sole-source or limited-source suppliers, and many of these suppliers sell equipment and parts to the Debtors based on one-off purchase orders. If the Debtors are unable to make payments to certain vendors who supply these parts, the Debtors' operations will be severely disrupted while the Debtors attempt to locate adequate replacement vendors. Failing to pay these vendors would therefore significantly harm the Debtors' operations, employees, and creditors, and compromise their restructuring efforts.

(iii) Materials Suppliers and Service Providers.

101. In the ordinary course of business, the Debtors rely on certain suppliers for materials that enable the Debtors to maintain active mining operations. Examples of such materials include diesel fuel, lubricants, chemicals, rock dust, concrete support blocks, belts, castings, and tires for a wide range of vehicles and loaders used at both surface and underground mining operations.²¹ Many of the Debtors' materials suppliers are local or regionally based and are the only available option to satisfy the Debtors' high-volume demands. In particular, those materials suppliers that supply diesel fuel, lubricants, and chemicals are critical to ongoing operations at both the point of coal extraction and during the preparation and cleaning process before coal is shipped to the Debtors' customers. Thus, there is no assurance that the Debtors would be able to obtain alternative materials suppliers without disrupting essential operations, especially given the often remote locations where the Debtors conduct mining operations. Without a steady stream of materials, the Debtors will not be able to operate. It is therefore critical that the Debtors have the authority to pay their materials vendors to continue these essential relationships.

²¹ Most of the materials used by the Debtors in their active mining operations are approved by federal regulators according to requirements established by MSHA.

(iv) **Repair and Maintenance Service Providers.**

102. The Debtors rely on a number of key service providers for the repair and maintenance of equipment, infrastructure, and facilities. Although the Debtors perform routine maintenance and repair work during the ordinary course of business, the Debtors rely on specialized service providers for the repair and maintenance of gas wells, power lines, cables, and certain technical equipment such as loading scales and coal quality analyzers. This repair and maintenance work requires service providers with specially trained personnel, of which there is a limited number. The Debtors' current repair and maintenance service providers offer high-quality services that the Debtors are unable to replicate from other providers. Therefore, preserving the Debtors' access to these service providers is critically important to the Debtors' ongoing operations.

c. ***Lien Claimants.***

103. The Debtors seek to pay the prepetition charges of certain contractors, repairmen, and other third-party service providers (the "Lien Claimants," and their claims, the "Lien Claims") that repair, maintain, and otherwise service necessary equipment and machinery used in the Debtors' operations. Absent payment of the accrued prepetition claims of the Lien Claimants, the Lien Claimants may cease to provide goods and services to the Debtors, and the Debtors would be left with no alternative providers capable of satisfying the Debtors' operational needs. I also believe that the Lien Claimants may be able to assert trade or mechanics' liens over the Debtors' leaseholds, as well as essential parts, machinery, and other equipment. Thus, it is critical to the continuity of the Debtors' operations that they maintain their relationships with the Lien Claimants.

d. *Shippers.*

104. In the normal course of their business, the Debtors utilize and make payments to delivery service providers, trucking and rail transport companies, freight terminal and port operators, transloaders, shippers, and other transportation service providers (the “Shippers,” and their claims, the “Shippers Claims”) that ship, transport, store, and otherwise facilitate the Debtors’ operations. The services provided by the Shippers are essential to the Debtors’ day-to-day operations as the Debtors rely on the Shippers to transport coal from the mines to preparation plants and from the preparation plants to rail terminals or other transportation depots. In many cases, the Shippers are irreplaceable and represent the only means to transport the Debtors’ goods. For example, the Debtors’ business depends critically on their relationships with several trucking and rail transport companies for which there are no adequate or available substitutes in the market. The Debtors also rely heavily on operators of key rail terminals, many of which represent the only practicable method of accessing and transporting the Debtors’ goods.

105. If these charges remain unpaid, I understand that the Shippers may attempt to assert possessory liens, and may refuse to deliver or release goods in their possession until their claims are satisfied and their liens redeemed. The Shippers’ possession (and retention) of the Debtors’ materials and products would disrupt the Debtors’ operations and affect the Debtors’ ability to efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors’ estates would likely be greater than the amount of Shippers Claims that the Debtors may pay if granted the requested authority. Moreover, the inability to locate suitable replacements for the Shippers would result in the Debtors’ mining operations coming to an immediate halt.

e. *503(b)(9) Claimants.*

106. The Debtors have received certain goods or materials from various vendors (the “503(b)(9) Claimants,” and their claims, the “503(b)(9) Claims,” and together with the Critical

Vendor Claims, Lien Claims, and Shippers Claims, the “Trade Claims”) within the 20-day period before the Petition Date. Many of the Debtors’ relationships with the 503(b)(9) Claimants are not governed by long-term contracts. Rather, the Debtors often obtain supplies on an order-by-order basis. As a result, the 503(b)(9) Claimants may refuse to supply new orders or could reduce existing trade credit without payment of their prepetition claims.²² I also believe certain 503(b)(9) Claimants could reduce the Debtors’ existing trade credit—or demand payment in cash-on-delivery—further exacerbating the Debtors’ limited liquidity. I believe that as of the Petition Date, they owe approximately \$29.5 million on account of goods delivered within the 20 days prior to the Petition Date, the value of which may be entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code. I believe that given (a) the ultimate administrative expense priority nature of these claims and (b) the vital role that many, if not all, of these vendors will likely have in the Debtors’ successful restructuring, it is in the best interest of their estates to have authority to pay these claims at the commencement of the chapter 11 cases.

f. *Outstanding Orders.*

107. Prior to the Petition Date and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (the “Outstanding Orders”). To avoid becoming general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors’ business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section

²² The Debtors do not seek to accelerate or modify existing payment terms with respect to the 503(b)(9) Claims. Rather, the Debtors will pay the 503(b)(9) Claims as they come due in the ordinary course of business.

503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority status under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the postpetition acceptance of goods subject to Outstanding Orders, and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

g. *The Debtors' Royalty and Leasehold Claimants.*

108. As of the Petition Date, the Debtors are party to various Royalty Agreements. Failure to make payments on account of the Royalty Agreements in the ordinary course of business would directly and adversely impact the Debtors' ability to mine coal related to the Royalty Agreements. The fees owed under the Royalty Agreements are generally calculated upon the sale of mined coal, but payments under certain Royalty Agreements can also be calculated on a production basis (*i.e.*, gross tons produced) or require minimum monthly, quarterly, or annual payments.

109. A subset of the Debtors' Royalty Agreements are in suspense, meaning that the ultimate beneficiary of the Royalty Agreement is currently in dispute or subject to investigation because, for example, the lessor may have died and title to the fee simple interest may not have been properly transferred. For these suspended Royalty Agreements, the Debtors have an accrued but unpaid balance of approximately \$4.5 million as of the Petition Date.

110. By the Critical Vendors and Lienholders Motion, the Debtors seek authority to set a fixed dollar amount of interim relief that can be used to satisfy Trade Claimants across any of the aforementioned categories. This structure is necessary as the Debtors' analysis of the Trade Claims and their go-forward relationship with the Trade Claimants remains an active, ongoing process. Allowing the Debtors to utilize an aggregate pool of funds to satisfy Trade Claims on an interim basis, in lieu of set dollar amounts for each category, allows the Debtors to continually analyze their business needs during the early days of these chapter 11 cases and as negotiations

with Trade Claimants progress. For these reasons, it is critical that the Debtors be authorized to utilize their reasonable business judgment to allocate funds where necessary to ensure a smooth landing into chapter 11 and prevent active mining operations from being disrupted.

111. The Debtors, with the assistance of their advisors, will continue to evaluate all Trade Claimants on an ongoing basis with the goal of ultimately determining an appropriate final allocation between each category of Trade Claimants and have established a protocol whereby senior members of the Debtors' management, along with legal oversight as necessary, determine which Trade Claimants to pay, in what amounts, and on what terms. Among other things, this process ensures that only those Trade Claimants who are most critical to the Debtors' operations will receive payment on some or all of their Trade Claims. The Debtors have every intention of using the relief requested in the Critical Vendors and Lienholders Motion to recoup working capital, prevent disruption in the supply chain, and maximize cash flow and ultimately earnings, which will benefit all of the Debtors' stakeholders.

112. For these reasons, the relief requested in the Critical Vendors and Lienholders Motion is in the best interests of the Debtors, their creditors and all other parties in interest.

- (x) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (the "Wages and Benefits Motion").

113. The Debtors' ability to preserve their businesses and successfully reorganize is dependent on the expertise and continued enthusiasm and service of their active employees (the "Employees"). The Employees perform a wide variety of functions critical to the administration of these chapter 11 cases and the Debtors' restructuring. The Employees' skills, knowledge, and understanding of the Debtors' operations and infrastructure are essential to preserving operational stability and efficiency. In many instances, the Employees include highly

trained personnel who cannot be easily replaced during this critical juncture of these cases and without whom the Debtors' reorganization efforts likely will be jeopardized.

114. In the ordinary course of business, the Debtors (a) pay standard and variable wage compensation and paid time off to their Employees, (b) maintain Employee reimbursement programs, and (c) maintain certain employee benefits, including medical, dental, vision, and prescription drug coverage and insurance, life insurance, accidental death and dismemberment insurance, disability insurance, workers' compensation insurance, a 401(k) savings plan, and other retirement savings plans for their Employees and certain union and retirees (the "Union & Retirees," and together with the Employees, the "Workforce"). In addition, the Debtors incur other employee-related costs such as payments to independent contractors, independent directors, and administrators related to their various employee benefits and collective bargaining agreements, and pay certain obligations related to the Debtors' retirees (each of the obligations discussed in this paragraph and as further described in detail below, collectively, the "Workforce Programs").

115. In the ordinary course of business, the Debtors seek authority to pay the aggregate prepetition amounts owed on account of the Workforce Programs set forth in the table below:

Workforce Programs	Interim Amounts	Final Amounts
Wages and Other Compensation		
Wages	\$11,700,000	\$11,700,000
Deductions	\$3,900,000	\$3,900,000
Independent Contractors	\$750,000	\$750,000
Variable Wages	\$5,200,000	\$5,300,000
Vacation Days, Holidays, and Personal Days	N/A	\$13,200,000
Reimbursements		
Business Expenses	\$150,000	\$150,000
Miscellaneous Employee Programs	\$8,700	\$8,700
Employee Benefits		

Workforce Programs	Interim Amounts	Final Amounts
Medical, Dental, Vision Insurance	\$9,100,000	\$9,100,000
Life Insurance & AD&D Insurance	N/A	N/A
Retirement Savings Plans	\$1,000,000	\$1,000,000
Union & Retiree Obligations	\$12,900,000	\$14,000,000
Workers' Compensation Program	\$4,700,000	\$22,800,000
Other Employee Benefits		
Payments to Independent Directors	\$68,000	\$68,000
Total	\$45,461,500	\$77,977,300

116. As of the Petition Date, the Debtors estimate the total amount outstanding on account of the Workforce Programs is approximately \$77,977,300, approximately \$45,461,500 of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors do not believe any Employee is owed any prepetition amounts in excess of the \$13,650 priority wage cap imposed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; however, out of an abundance of caution, the Debtors seek approval to pay such amounts, if any, solely pursuant to a final order.²³

a. *Employee Payroll, Payroll Deductions, & Payroll Taxes.*

117. Hourly Employees are paid bi-weekly on Fridays (or on the preceding business day if a Friday falls on a holiday). Salaried Employees are paid bi-weekly on Fridays or semi-monthly on the fifteenth and last day of each month. Both Hourly Employees and Salary Employees are paid up to two weeks in arrears. As a result, Employees often have wages and other compensation that has accrued, but is unpaid, at any given point in time. In 2019, the Debtors' monthly payroll obligations have averaged approximately \$37.4 million.

²³ Certain Employees in all tiers of the Debtors' organizational structure may be entitled to compensation and Employee Benefits (as defined herein) that exceed the statutory cap on account of accrued vacation, as discussed in greater detail below. None of these amounts (certain of which are required by law in various states) are currently due, but instead would only be due if such Employees are terminated or resign.

118. The Debtors conduct their own payroll administration, except as noted below. Thus, in the ordinary course of business, the Debtors process deductions from Employees' compensation on account of federal, state, and local income taxes, FICA, court-ordered garnishments, employee retirement savings programs, loan repayments, optional supplemental insurance, union dues, uniforms, voluntary political or charitable contributions, and other programs (collectively, the "Deductions"). Some Deductions are made from each paycheck, while other Deductions are made less frequently. In 2019, the Deductions have averaged approximately \$14.6 million per month.

119. In addition to the Deductions, the Debtors are also required by law to pay certain amounts to the appropriate federal, state, and local taxing authorities on account of programs such as Social Security, Medicare, and unemployment insurance (collectively, the "Employer Payroll Taxes"). The Employer Payroll Taxes are aggregated by the Debtors and forwarded to ADP, a third-party processing agent, who remits the Employer Payroll Taxes to the appropriate federal, state, or local taxing authority. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Employer Payroll Taxes is approximately \$1 million, and ADP is owed approximately \$5,000 on account of its processing agent services, all of which will come due during the first 21 days of these chapter 11 cases.

120. The Debtors also offer a self-insured disability compensation plan for Salaried Employees (the "Salary Continuation Plan"). The Salary Continuation Plan covers Salaried Employees who regularly work at least 30 hours per week and who become disabled and are unable to perform their essential duties due to illness or injury. The Salary Continuation Plan pays eligible Employees 100% of their pre-disability wages for a maximum of 12 weeks, then 50% of

pre-disability wages thereafter. The maximum benefit period under the Salary Continuation Plan is 180 days.

121. The Debtors estimate that, as of the Petition Date, accrued but unpaid wages and other compensation and payroll taxes total approximately \$11.7 million, including approximately \$3.9 million attributable to the Deductions, all of which will come due during the first 21 days of these chapter 11 cases.

b. *Variable Wages.*

122. The Debtors provide certain Employees with three separate variable wage components as part of their compensation (together, the “Variable Wages”). The Debtors offer approximately 1,100 Employees a variable wage component based on safety and mining production (the “Operating Variable Wage”). If an eligible Employee meets or exceeds the safety and production target, such Employee is eligible to receive pre-determined amount compensation in addition to such Employees’ normal wages. The Operating Variable Wage is paid in arrears because the Debtors verify via compliance with safety metrics and measurement of the footage mined prior to paying the Operating Variable Wage. As of the Petition Date, the Debtors estimate that the accrued and unpaid amounts owed on account of the Operating Variable Wage are approximately \$400,000, all of which will come due within the first 21 days of these chapter 11 cases.

123. The Debtors also award an extra-day or extra-shift variable wage to approximately 950 Salaried Employees (the “Extra-Shift Variable Wage”). The Extra-Shift Variable Wage compensates the Salaried Employees for full shifts worked in addition to the minimum work requirement for Salaried Employees. The Extra-Shift Variable Wage is normally paid to such eligible Salaried Employees monthly. As of the Petition Date, the Debtors estimate that the

accrued and unpaid amounts owed on account of the Extra-Shift Variable Wage are approximately \$900,000, all of which will come due within the first 21 days of these chapter 11 cases.

124. Finally, the Debtors offer approximately 1,500 Salaried Employees with a variable wage based upon mining production (the “Monthly Variable Wage”). The Monthly Variable Wage is calculated based on a variety of factors including safety metrics, production volume, and mining cost levels. Each Salaried Employee has a maximum Monthly Variable Wage based on their job title. Each month, the Monthly Variable Wage is calculated for each eligible Salaried Employee by multiplying the relative performance and weight of each of the foregoing factors times such Salaried Employees’ maximum award.

125. The Debtors pay the Monthly Variable Wage outside of Salaried Employees’ normal bi-weekly or semi-monthly pay period. Because the Monthly Variable Wage is not paid until mine performance for the previous month is analyzed and processed, checks are typically remitted 2–3 weeks after the end of each month. The positions of the 1,500 Employees who are eligible for the Monthly Variable Wage range from administrative assistants and warehouse clerks to certain corporate executives. On average, the Debtors pay approximately \$2.9 million per month on account of the Monthly Variable Wage. As of the Petition Date, the Debtors estimate that there are approximately \$4 million in accrued and unpaid amounts owed on account of the Monthly Variable Wage, \$3.9 million of which will come due during the first 21 days of these chapter 11 cases.

c. *Independent Contractors and Consulting Services.*

126. In addition to Employees, the Debtors retain independent contractors to undertake specific corporate projects on an ad hoc, as-needed basis, and perform specific tasks at the Debtors’ mines related to mine safety (the “Independent Contractors”). The Debtors directly contract with certain Independent Contractors and utilize certain companies to provide the Debtors with other

Independent Contractors. As of the Petition Date, the Debtors estimate that the accrued and unpaid amounts owed to Independent Contractors is approximately \$750,000, all of which will come due during the first 21 days of these chapter 11 cases.

d. *Vacation Days, Holidays, and Personal Days.*

127. All of the Debtors' Employees are entitled to paid time off ("PTO") on an annual basis. Non-Union Employees are generally entitled to ten days of PTO plus paid holidays per year. Non-Union Employees are also entitled to additional PTO per year based on the Non-Union Employee's length of employment with the Debtors where the employee can earn up to a maximum of 20 total days. On an annual basis, Union Employees are entitled to fourteen days of PTO, four floating days of PTO, and eleven paid holidays pursuant to the CBAs. Union Employees are expected to take their vacation days based on mine level policies and practices.

128. Employees' unused days of PTO hours do not carry over from one calendar year to the next. Employees' PTO accrues at the beginning of each calendar year, and if an Employee is terminated or leaves the Debtors, he or she receives payment for all of that year's unused PTO. The Debtors estimate that, as of the Petition Date, total accrued but unpaid PTO liability is approximately \$13.2 million. The Debtors request authority to pay such accrued but unpaid PTO liabilities in the ordinary course of business, as necessary.

e. *Reimbursed Business Expenses.*

129. In the ordinary course of their business, the Debtors reimburse Employees for a variety of ordinary, necessary, and reasonable expenses that Employees incur within the scope of their job duties. Such expenses include costs for travel (including lodging, automobile rentals, meals, and internet charges), taxi and mileage costs, and other general business-related expenses.

130. Employees are expected to use sound judgment when incurring business expenses for which they seek reimbursement. To be reimbursed, an Employee must submit his or her

receipts to a reviewer designated by the Debtors for approval, and must do so on at least a monthly basis. If approved, the Debtors reimburse the Employee for the reimbursed business expenses by check in the ordinary course of the Debtors' businesses. As of the Petition Date, I believe that there is approximately \$150,000 in accrued but unpaid amounts owing to Employees for reimbursements on account of business expenses, all of which will come due during the first 21 days of these chapter 11 cases.

f. *Miscellaneous Employee Programs.*

131. The Debtors also offer Employees a number of miscellaneous benefits (the "Miscellaneous Employee Programs"), including benefits required by its CBAs such as meals when an Employee works a certain number of hours, and uniform purchases pre-tax. The Debtors offer certain Employees the ability to participate in a vehicle reimbursement program (the "Vehicle Program") if an eligible Employee is required to use a vehicle in the ordinary course of their work. An Employee must be approved by senior management to participate in the Vehicle Program. Eligible Employees are given a stipend, paid in conjunction with their paycheck, that ranges from \$900 to \$1,200 a month, depending on the Employee's position. The cost of gas for work-related use of vehicles is borne by the Debtors through access to on-site gasoline pumps or via expense reports. As of the Petition Date, approximately 250 Employees participate in the Vehicle Program.

132. The Debtors also offer certain Employees a credit card issued by Wex Inc. (the "Wex Fuel Cards") to use for fuel expenses in the ordinary course of business. The Wex Fuel Cards automatically track employee fuel expenses and each month, the Debtors' treasury department reviews the billing reports for the Wex Fuel Cards to ensure all charges are authorized. The Wex Fuel Credit Cards have an aggregate credit limit of \$10,000. As of the Petition Date, approximately 15 Employees are authorized to utilize the Wex Fuel Cards.

133. The Debtors also offer certain Employees a stipend for cell phone usage (the “Cell Phone Program”). Eligible Employees receive a stipend of \$70.01 per month. To be eligible, Employees must be approved for participation in the program by the head of their department or group.

134. As of the Petition Date, the Debtors estimate that there are approximately \$8,700 in outstanding obligations on account of the Wex Fuel Cards, all of which will come due with the first 21 days of these chapter 11 cases. The Debtors also request authority to make future payments under the Miscellaneous Employee Programs in the ordinary course of business.

g. *Employee Benefits.*

135. Prior to the Petition Date, the Debtors offered Employees, their eligible spouses, and their dependents various standard employee benefits, including, without limitation, (a) medical insurance, (b) basic term life and AD&D insurance, (c) short-term disability insurance, (d) retirement savings plans, (e) workers’ compensation, and (f) miscellaneous other benefits provided to the Employees in the ordinary course of business (collectively, the “Employee Benefits”). As of the Petition Date, the Debtors were obligated to pay certain contributions to or provide benefits under such plans, programs, and policies to their Employees.

h. *Medical, Dental, and Vision Insurance.*

136. The Debtors offer substantially all Employees basic medical insurance, vision care, prescription drug coverage, and related benefits under plans administered by certain of the Debtors. The medical plan offered to Non-Union Employees is a self-insured PPO plan (the “Non-Union Medical Plans”), under which participants choose healthcare providers in one of three provider networks: the High Performance Network, the Tier I In-Network, and the Tier-II Out-of-Network. Under the Non-Union Medical Plans, deductibles and out-of-pocket limits vary by provider and Employees typically pay between 10%–50% of the coinsurance, with the

remainder of the cost paid by the Non-Union Medical Plan. The Health Plan, a local claims administrator, supervises claims brought under the Non-Union Medical Plan.

137. The Debtors' Union Employees are provided medical insurance through a self-insured PPO plan administered by the UMWA Funds (the "UMWA Medical Plan," and together with the Non-Union Medical Plans, the "Medical Plans"),²⁴ under which eligible Union Employees and their family members have the choice to use providers within the network or to use providers outside of the network.

138. The Medical Plans are fully self-insured and the Debtors pay separate administrative fees to The Health Plan and the UMWA Funds (the "Administrators"). The obligations that the Debtors incur on behalf of the Employees on account of the Medical Plans average approximately \$4.1 million per month. The Debtors also pay monthly administration fees of approximately \$250,000 to the Administrators. In addition, the Debtors pay Employees' prescription drug costs which average approximately \$2.1 million per month. These are paid bi-weekly to the appropriate Administrator, and can be subsequently offset by rebates. As of the Petition Date, the Debtors estimate that they owe approximately \$9.1 million on account of the Medical Plans, including \$300,000 in fees owed to the Administrators, all of which will come due in the first 21 days of these chapter 11 cases.

i. *Life Insurance & AD&D Insurance.*

139. All of the Debtors' Employees are entitled to basic life insurance (the "Life Insurance") and accidental death & dismemberment insurance (the "AD&D Insurance"). For Non-Union Employees, the Life Insurance is provided in an amount up to 200% of an Employee's annual earnings, with a maximum benefit of \$350,000. For these

²⁴ The Debtors' Medical Plans also cover employees of certain of the Debtors' non-debtor affiliates.

same Employees, supplemental Life Insurance and AD&D Insurance are available and are paid for by Non-Union Employees who elect coverage through a payroll deduction. Both the Life Insurance and AD&D Insurance for Non-Union Employees are administered by Prudential.

140. Pursuant to the CBAs, Union Employees receive \$90,000 of Life Insurance and \$90,000 of AD&D Insurance.²⁵ Each month, the Debtors pay approximately \$200,000 on account of the premiums and administrative fees related to Employees' Life and AD&D Insurance. As of the Petition Date, the Debtors do not owe obligations on account of the Life Insurance and AD&D Insurance. Out of an abundance of caution, however, the Debtors request authority to pay monthly Life Insurance and AD&D Insurance obligations in the ordinary course of business.

141. Union Employees are offered similar protections under the CBAs. Union Employees with at least six months of service are eligible for sickness and accident payments of \$470 per week if injured or sick, regardless of whether such injury or sickness is work-related. Union Employees must be injured or sick for seven days before receiving any payment, unless such injury or sickness requires hospitalization for surgical treatment or intensive care. The maximum duration of such sickness and accident benefits ranges from 6 to 52 weeks, depending on a Union Employee's length of employment.

j. *Retirement Savings Plans.*

142. The Debtors contribute to three employee retirement savings plans: (a) a restricted 401(k) plan (the "Murray Restricted Plan"); (b) a retirement savings plan offered by UMWA (the "UMWA Plan"); and (c) a retirement savings plan under the Debtors' CBA with Seafarers International Union (the "Seafarers Plan," and together with the Murray Restricted Plan

²⁵ The CBAs provide for payment of \$90,000 for non-violent death and payment of \$180,000 to the miner's named beneficiary for death due solely to violent, external, and accidental means (whether at work or not at work). In addition, the CBAs provide for up to \$120,000 for the loss of one or more "members" (including hands, feet, and eyes).

and the UMWA Plan, the “Retirement Savings Plans”). Currently, approximately 2,300 Employees participate in the Retirement Savings Plans, excluding the UMWA Plan.

143. Under the Murray Restricted Plan, an Employee may contribute a portion of his or her eligible earnings each year on a pre-tax basis to the Murray Restricted Plan, subject to limits imposed by federal law. These contributions are deducted from the paychecks of participating Employees and held in trust on the Employees’ behalf until such amounts can be paid to Transamerica, the administrator, to be held on the Employee’s behalf. The Debtors also match Employees’ contributions to the Murray Restricted Plan on a dollar-for-dollar basis, up to 3% of an Employee’s wages. In addition, the Murray Restricted Plan permits Employees to take loans against their individual 401(k) account; to repay such amounts, the Debtors deduct loan payments from such Employee’s paycheck and remit such amounts to Transamerica. The Murray Restricted Plan is administered by Transamerica and the Debtors utilize CBIZ, Inc. to advise the Debtors on investment issues relating to the Murray Restricted Plan. Fees for Transamerica and CBIZ, Inc. are paid directly out of the Murray Restricted Plan’s assets.

144. The Debtors’ contributions to the other Retirement Savings Plans is set as a fixed dollar amount per hour under each respective CBA. Under the UMWA Plan, the Debtors contribute between \$0.13 and \$3.13 per hour worked per participating Employee, depending on length of employment. Under the Seafarers Plan, the Debtors contribute \$2.00 per hour worked per participating Employee.

145. The Debtors typically pay approximately \$1.2 million per month in aggregate contributions to the Retirement Savings Plans.²⁶ The Debtors estimate that there are approximately

²⁶ This amount does not include Employee contributions that are deducted from paychecks; this only includes contributions paid by the Debtors.

\$1 million in payments outstanding on account of Retirement Savings Plan contributions, all of which will come due in the first 21 days of these chapter 11 cases. Failure to make payments of these prepetition amounts could impact morale and decrease Employee productivity or increase Employee attrition. Accordingly, the Debtors request authority to continue to make such contributions under the Retirement Savings Plans.

k. *Union & Retiree Obligations.*

146. The Debtors have a number of obligations under their CBAs and the Coal Act (as defined herein) (the “Union & Retiree Obligations”). The Debtors contribute to the UMWA’s 1974 Pension Plan and Trust (the “1974 Pension Plan”) as required by the Debtors’ CBA with the UMWA (the “2016 CBA”) and related trust documents. The 1974 Pension Plan provides benefits to over 80,000 retired miners and surviving spouses, the substantial majority of whom did not work for Murray or one of its predecessor entities. In its latest annual report, released in January 2019, the 1974 Pension Plan reported annual contributions of approximately \$20 million, total assets of approximately \$2.3 billion, and annual expenses (including pension disbursements) of approximately \$600 million. Based on the annual report, the 1974 Pension Plan is projected to exhaust its assets by 2022. The Debtors currently contribute \$5 per hour worked for every current Union Employee who is eligible for the 1974 Pension Plan.

147. In addition, the Debtors have other post-employment benefits (“OPEB”) obligations under the 2016 CBA, the UMWA Benefit Fund (the “1992 Benefit Fund”), and the UMWA Benefit Trust (the “1993 Benefit Trust”). The Debtors currently contribute \$0.5 per hour worked for every current Union Employee who is eligible for the 1993 Benefit Trust. As required by the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701–22 (the “Coal Act”), the Debtors paid approximately \$23 million in 2018 for OPEB obligations related to the 2016 CBA

and the Debtors have posted approximately \$22.5 million in security for OPEB obligations related to the 1992 Benefit Plan.

148. Pursuant to their CBAs, the Debtors also pay certain retirees' prescription drug costs, which the Debtors pay bi-weekly to the UMWA Funds and can be subsequently offset by rebates.

149. In connection with their negotiations with the UMWA, the Debtors are members of the Bituminous Coal Operators' Association (the "BCOA"). The Debtors have certain membership dues and other obligations that are owed to the BCOA in the ordinary course of their membership.

150. On a monthly basis, the Debtors pay approximately \$10.1 million in Union & Retiree Obligations. The Debtors estimate that as of the Petition Date, there are approximately \$14 million in Union & Retiree Obligations outstanding, \$12.9 million of which will come due within the first 21 days of these chapter 11 cases. Of the \$12.9 million that will come due within the first 21 days of these chapter 11 cases, the Debtors estimate that approximately \$7.1 million is on account of retiree prescription drug costs, \$3.9 million is on account of retiree medical, dental, and vision costs, \$1.4 million is on account of obligations under the 1974 Pension Plan and 1993 Benefit Trust, and \$500,000 is on account of administrative costs related to the Union & Retiree Obligations. By this motion, the Debtors seek authority to pay prepetition claims, honor obligations, and continue programs, in the ordinary course of business and consistent with past practice, relating to the Union & Retiree Obligations.

I. *Workers' Compensation.*

151. The Debtors maintain workers' compensation insurance for Employees at the levels required by law in the states in which the Debtors operate for claims arising from or related to their employment with the Debtors, including occupational pneumoconiosis (also known as "black

lung”) claims under applicable state law (collectively, the “Workers’ Compensation Program,” and any obligations thereto the “Workers’ Compensation Obligations”). The Debtors also incur costs in connection with the United States Black Lung Benefits Revenue Act of 1977 and the Black Lung Benefits Reform Act of 1977 (collectively, the “Black Lung Acts”).²⁷

152. The Debtors’ Workers’ Compensation Program consists of fully insured policies through Zurich American Insurance Company, self-insured policies administered by HealthSmart Casualty Claims Solutions, large deductible policies through Rockwood Casualty Insurance Company, and a self-insured policy with a loss fund to cover legacy workers’ compensation claims administered by East Coast Risk Management.²⁸ The Debtors owe approximately \$22.8 million on account of their Workers’ Compensation Obligations, \$4.7 million of which will come due in the first 21 days of these cases.²⁹ This amount consists of premiums on account of the fully insured and high-deductible policies, claims on account of the self-insured policies, outstanding weekly payments to the legacy loss fund, and administrative fees.

153. By this motion, the Debtors seek authority to pay prepetition amounts owed with respect to the Workers’ Compensation Obligations, and to continue honoring their obligations with respect to the Workers’ Compensation Program in the ordinary course of business. It is critical that the Debtors be permitted to continue their Workers’ Compensation Program and to pay outstanding prepetition claims, taxes, charges, assessments, premiums, and third-party

²⁷ As of the Petition Date, the Debtors estimate that they owe approximately \$520,000 on account of obligations pursuant to the Black Lung Acts. The Debtors reserve all of their rights with regard to any obligations arising pursuant to the Black Lung Acts.

²⁸ As of the Petition Date, the Debtors have posted approximately \$54 million in collateral on behalf of certain insurers to backstop certain of the Debtors’ Workers Compensation Obligations.

²⁹ These estimates are based on the Debtors’ maintaining current payroll during the duration of the current policy period.

administrator fees in the ordinary course of business because alternative arrangements for workers' compensation coverage would most certainly be more costly, and the failure to provide coverage may subject the Debtors and/or their officers to severe penalties.

m. *Payments to Independent Directors.*

154. In the ordinary course of business, the Debtors compensate their three Independent Directors for their service on the Debtors' board of directors. The Debtors pay two Independent Directors a retainer of \$107,000 per year and the third Independent Director a retainer of \$200,000 per year. Certain of the Independent Directors are paid \$4,000 for each board meeting they attend, \$3,000 for each telephonic board or committee meeting in which they participate, and compensation on a "per diem" basis at a rate of \$500 per hour, with such "per diem" compensation capped at \$4,000 per day. The Independent Directors serving on the Audit and Safety and Regulatory Policy Committees receive additional annual compensation of \$20,000 for each committee, while the Independent Directors serving on the Compensation Committee receive additional annual compensation of \$17,000. The Debtors also reimburse the Independent Directors for reasonable out-of-pocket expenses incurred in connection with their service as directors. Independent Directors do not participate in any of the Debtors' benefit plans.

155. The Independent Directors' service is necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors be authorized to pay all prepetition amounts accrued as of the Petition Date to the Independent Directors. As of the Petition Date, the Debtors estimate that the aggregate accrued but unpaid amounts owed to the Independent Directors for fees and expenses is approximately \$68,000, all of which will come due in the first 21 days of these cases. In addition, out of an abundance of caution, the Debtors request authority to continue to pay monthly fees and reimburse expenses to the Independent Directors on a postpetition basis in the ordinary course of business.

156. Thus, granting the relief requested in the Wages Motion should only affect the timing of certain payments to the Employees, and should not negatively affect recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of the Workforce Programs at this time enhances value for the benefit of all interested parties.

n. *Summary.*

157. The Workforce provides the Debtors with services necessary to conduct the Debtors' businesses, and I believe that absent the payment of the Workforce Obligations owed to, or on account of, the Workforce, the Debtors may experience Workforce turnover and instability at this critical time in these chapter 11 cases. I believe that without these payments, the Workforce may become demoralized and unproductive, and ultimately the non-payment of prepetition claims could result in the loss of a significant portion of the Workforce. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. I therefore believe that payment of the prepetition obligations with respect to the Workforce Programs is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their businesses in these chapter 11 cases.

158. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Wages Motion should be granted.

- (xi) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Perform Under Existing Coal Sale Contracts in the Ordinary Course of Business and (B) Enter Into and Perform Under New Coal Sale Contracts in the Ordinary Course of Business, and (III) Granting Related Relief (the "Coal Sales Motion").

159. The Debtors routinely and in the ordinary course of their business entered into contracts with customers to sell coal from the Debtors' mining operations or acquired from other sources ("Coal Sale Contracts"). Entering into, performing under, and amending Coal Sale

Contracts represents a core and critical part of the Debtors' operations. Coal sales generate virtually all of the Debtors' revenues. Entering into, performing under, and amending new postpetition Coal Sale Contracts and performing under and amending existing Coal Sale Contracts is within the ordinary course of the Debtors' business. Furthermore, the Debtors' competitors in the coal industry similarly ship product pursuant to long- and short-term contracts, and the Debtors historically compete on terms with those competitors.

160. Consistent with historical practice and in the ordinary course of business, the Debtors consider a number of factors before entering into or amending Coal Sale Contracts, including, but not limited to: (a) cost, revenue, and quality specifications concerning the coal to be sold; (b) production and sales balances to determine availability of coal over the proposed delivery term for the transaction; (c) the market, including market prices from relevant indices, pricing reported to the public, and recent transactions; (d) ability of a customer to pay for the coal purchased; (e) transportation availability, if applicable; and (f) agreement on contractual terms. Such considerations help the Debtors ensure that entering into a Coal Sale Contract makes good business sense and is in the Debtors' best interests.

161. Because Coal Sale Contracts are often long-term agreements (sometimes continuing for several years) and often cover very large quantities of coal and involve millions of dollars in aggregate purchase price, counterparties may be unwilling to transact with the Debtors without specific authorization from this Court. If the Debtors had to seek Court approval every time they wished to enter into a new Coal Sale Contract or perform under or amend an existing Coal Sale Contract, I believe that they would be at a competitive disadvantage in the market, and could lose customers and revenues, thus endangering their chances of successfully restructuring. Revoking the Debtors' authority to contract with customers would cause Murray's dynamic

distribution mechanism to grind to a halt, sending customers scrambling to substitute their coal supply in favor of a more flexible counterparty. In the highly competitive coal market, the Debtors must be able to enter into, perform under, and/or amend Coal Sale Contracts quickly and efficiently. Otherwise, the Debtors risk losing revenue if certain counterparties are unwilling to accept any perceived risk regarding whether the Debtors have the authority to enter into Coal Sale Contracts in the ordinary course of the Debtors' business.

162. Allowing the Debtors to continue entering into Coal Sale Contracts is thus necessary to maintain the Debtors' their business operations in the ordinary course. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Coal Sales Motion should be granted.

(xii) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Continue Their Surety Bond Program and (II) Granting Related Relief (the "Surety Bond Motion").

163. In the ordinary course of business, the Debtors are required by applicable federal and state laws and regulations to post bonds to certain government units or other public agencies (the "Surety Bond Program"). Such bonds secure the Debtors' performance or payment of certain obligations related to the Debtors' coal mining activities. More specifically, the Surety Bond Program includes, among others, (a) reclamation bonds and supplemental bonds, (b) long term water treatment bonds, (c) road damage bonds, (d) encroachment bonds, and, (e) utility bonds, (f) subsidence bonds, (g) federal and state lease bonds, (h) employee related bonds, (i) litigation related bonds, and (j) transportation related bonds (each, a "Surety Bond," and collectively, the "Surety Bonds").

164. The Surety Bond Program is essential to the Debtors' operations. For example, without posting bonds required by the SMCRA and/or the applicable state statutes, the relevant government agency will not issue a permit allowing the Debtors to conduct their mining operations

on a particular property. Because the Debtors are required to provide, maintain, and timely replace surety bonds or other forms of credit support to certain third parties, often governmental units or other public agencies, to secure the payment or performance of certain obligations, and any failure to provide, maintain, or timely replace the Surety Bonds would jeopardize the Debtors' ability to operate their business.

165. As of the Petition Date, the Debtors have 521 Surety Bonds outstanding, which provide approximately \$280 million in aggregate Surety Bond coverage. The Debtors have posted approximately \$35 million in cash and other consideration to collateralize the Surety Bonds. Approximately 80 percent of the Surety Bond coverage secures reclamation obligations to governmental authorities related to the Debtors' mining operations. The Debtors' remaining Surety Bond coverage secures the Debtors' obligations related to water treatment and waterways, road damage, encroachment on public lands or structures, and oil and gas well maintenance.

166. The issuance of a Surety Bond shifts the risk of the Debtors' nonperformance or nonpayment from the Debtors to a surety. Unlike an insurance policy, if a surety incurs a loss on a Surety Bond, it is entitled to recover the full amount of that loss from the principal. To that end, the Debtors are party to indemnity agreements with Argonaut Insurance Company ("Argo") and Indemnity National Insurance Company ("INIC," and together with Argo, the "Sureties"), which set forth the Sureties' rights to recover from the Debtors (the "Surety Indemnity Agreements"). Pursuant to the Surety Indemnity Agreements, the Debtors agree to indemnify the Sureties from any loss, cost, or expense that the Sureties may incur on account of the issuance of any bonds on behalf of the Debtors.

167. The Surety Indemnity Agreements allow the Sureties to request collateral security from the Debtors from time to time. Under the Surety Indemnity Agreements, the Debtors are

either required to provide additional collateral at regular intervals or upon demand in response to assertion of liability against a Surety. As of the Petition Date, the Debtors are due to pay approximately \$1,250,000 in additional collateral during the first 21 days of these chapter 11 cases. The Debtors have agreed to maintain such collateral in the ordinary course of business pursuant to the Surety Indemnity Agreements.

168. Additionally, the Debtors pay premiums associated with each bond issued by the Sureties (the “Surety Premiums”). The annual Surety Premiums for the Debtors’ Surety Bonds total approximately \$7.1 million. As of the Petition Date, the Debtors estimate that they have approximately \$230,000 in Surety Premiums outstanding, all of which will become payable during the first 21 days of these chapter 11 cases.

169. The Debtors’ failure to provide, maintain, or timely replace the Surety Bonds may, therefore, jeopardize the Debtors’ ability to conduct their operations. Moreover, based on the Debtors’ current circumstances, I do not believe that the Debtors could replace existing Surety Bonds on terms more favorable than those offered by the Sureties. The process of establishing a new Surety Bond Program would be burdensome to the Debtors, and it is doubtful that the Debtors could replace all of the Surety Bonds in time to avoid defaults or other consequences of the applicable obligations. Continuing the Surety Bond Program is therefore necessary to maintain the Debtors’ current business operations, as well as the existing relationship with the Sureties. In short, failure to maintain the Surety Bond Program would have a detrimental impact on the Debtors’ businesses and the value of their estates.

- (xiii) Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Their Insurance Policies and Honor All Obligations In Respect Thereof, (B) Renew, Supplement, and Enter Into New Insurance Policies, (C) Honor the Terms of the Premium Financing Agreements and Pay Premiums Thereunder, (D) Enter into New Premium

Financing Agreements in the Ordinary Course of Business, and
(II) Granting Related Relief (the “Insurance Motion”).

170. In the ordinary course of business, the Debtors maintain approximately 75 insurance policies (collectively, the “Insurance Policies,” and each individually an “Insurance Policy”) that are administered by various third-party insurance carriers (collectively, the “Insurance Carriers”). The Insurance Policies provide coverage for, among other things, the Debtors’ property, general liability, automobile liability, umbrella coverage, excess liability, pollution liability, employers’ liability, and directors’ and officers’ liability (including tail coverage). The Insurance Policies are essential to the ongoing operation of the Debtors’ businesses. The aggregate annual premium for the Insurance Policies is approximately \$31.7 million plus applicable taxes and surcharges.

171. The Insurance Policies are generally one year in length and renew at different times throughout the year. Insurance premiums are typically prepaid on an annual basis, subject to the payment terms under each Insurance Policy. As of the Petition Date, the Debtors estimate that there are approximately \$3.3 million in insurance premiums due or outstanding, the majority of which is related to certain directors’ and officers’ insurance policies (the “D&O Policies”).

172. Some, but not all, of the Insurance Policies are financed through premium financing agreements with BankDirect Capital Finance (“BankDirect”). The Premium Financing Agreements expire on December 15, 2019 and June 1, 2020. One Premium Financing Agreement has been paid in full and has no monthly payments remaining. Under the other Premium Financing Agreements, the Debtors are required to make monthly payments of approximately \$600,000 on the fifth day of each month through April 5, 2020. The Premium Financing Agreements are an integral part of the Debtors’ insurance programs and vital to their ability to finance and procure

the Insurance Policies. In many instances, insurance coverage is required by the regulations or laws, the Debtors' credit agreements, and contracts that govern the Debtors' commercial activities.

173. I believe that continuing to perform under the Premium Financing Agreements on a postpetition basis is in the best interests of the Debtors' estates. Moreover, in light of their financial circumstances, alternative insurance premium finance companies may not be willing to provide insurance premium financing to the Debtors on attractive market terms on a postpetition basis. Simply put, it is critical for the Debtors to continue to perform under their existing Premium Financing Agreements.

174. The Debtors obtain all of their Insurance Policies through their Brokers who, among other things, (a) assist the Debtors in obtaining comprehensive insurance coverage for the Debtors' operations in a cost-effective manner, (b) manage renewal data, (c) market the Insurance Policies, (d) provide all interactions with carriers including negotiating policy terms, provisions, and premiums, and (e) provide ongoing support throughout the applicable policy periods. The Brokers collect commission payments for their services as part of the premiums paid on account of the Insurance Policies.

175. The non-payment of any premiums, deductibles, self-insured retentions, or related fees (including fees owed to Brokers) under the Insurance Policies could result in one or more of the Insurance Carriers terminating or declining to renew their insurance policies or refusing to enter into new insurance policies with the Debtors in the future. If any of the Insurance Policies lapse without renewal, the Debtors could be exposed to substantial personal liability or property damages, to the detriment of all parties in interest. Moreover, certain of the Debtors' leases and financing agreements require the Debtors to remain current with respect to certain of their primary Insurance Policies.

176. Any interruption in coverage would expose the Debtors to a number of risks, including: (a) the possible incurrence of direct liability for the payment of claims that otherwise would have been covered by the Insurance Policies; (b) the possible incurrence of material costs and other losses that otherwise would have been reimbursed, such as attorneys' fees for certain covered claims; (c) the possible inability to obtain similar types and levels of insurance coverage or premium financing on terms equally favorable as the present coverage; and (d) the possible incurrence of higher costs for re-establishing lapsed Insurance Policies or obtaining new insurance coverage. Thus, if the requested relief is not granted and the Insurance Policies lapse or terminate, the Debtors may well be unable to continue large portions of their operations, thereby endangering the Debtors' successful reorganization and substantially harming all creditors. Accordingly, on behalf of the Debtors, I respectfully submit that the Insurance Motion should be granted.

(xiv) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto (II) Granting Related Relief (the "Customer Programs Motion").

177. The Debtors' customer base includes a varied base of domestic utility companies and power transmission operators as well as various end users through exports into international markets. The Debtors operate in a highly competitive market for coal, where alternate suppliers of coal and other sources of energy are available to the Debtors' customers. Maintaining the loyalty, support, and goodwill of these customers is critical to the Debtors' reorganization efforts. The Debtors must maintain positive customer relationships and their reputation for reliability to ensure that their customers continue to purchase the Debtors' coal. To that end, and consistent with common industry practice, the Debtors incur various obligations to customers under coal sale contracts, including true-ups, laboratory fees, demurrage, reimbursed payments, power price sharing adjustments, and other customer obligations (the "Customer Programs").

178. I believe that the Debtors' ability to continue the Customer Programs and to honor their obligations thereunder in the ordinary course of business is necessary to retain their reputation for reliability, meet competitive market pressures, and ensure customer satisfaction, thereby retaining current customers, attracting new ones, and, ultimately, enhancing revenue and profitability for the benefit of all of the Debtors' stakeholders.

179. The Debtors estimate that they will have approximately \$4.3 million in prepetition obligations on account of Customer Programs outstanding as of the Petition Date, all of which will come due during the first 21 days of these cases. Separately, the Debtors estimate that they are owed approximately \$6.5 million in premiums on account of True-Ups (as defined therein). The following are general descriptions and examples of some, but not all, of the Debtors' Customer Programs:

Customer Program	Description
Deposits	From time to time, the Debtors receive deposits or prepayments from certain customers for coal shipments not yet delivered or provided to such customers (collectively, the " <u>Deposits</u> "). The Debtors generally apply the Deposits against the applicable customer's account either incrementally as the coal is delivered, or only once upon the final delivery. The Debtors estimate that as of the Petition Date, there are approximately \$461,000 in Deposits on hand, all of which will come due within the first 21 days of these cases.
True-Ups	In the ordinary course of their businesses, the Debtors initially charge customers for coal shipments based on estimations of weight, quality of coal, and other considerations. In situations when the actual weight or quality of a shipment varies from the estimate, the Debtors must reconcile estimated charges against actual charges (a " <u>True-Up</u> "). True-Ups occur in a number of different circumstances, including (a) when the Debtors make deficiency payments if coal shipments fall below the estimated weight for any shipments that provide for destination weights and (b) when the Debtors issue product quality adjustments to the extent that delivered product does not meet contracted quality parameters. Quality-based True-Ups are calculated using reports by independent analytic service providers that analyze coal shipments as required by the customer contracts. True-Ups are a key feature of the Debtors' customer practices, and virtually all of the Debtors' contracts involve one or more True-

Customer Program	Description
	Up mechanisms. True-Ups are generally applied to the invoice for which they are being made and are a key program that ensures that the Debtors' accurately charge customers for the value of the coal delivered. The Debtors estimate that as of the Petition Date, they do not have any outstanding True-Up obligations, but rather are owed approximately \$6.5 million in premiums by their customers.
Laboratory Fees	Pursuant to the Debtors' contracts with certain purchasers of coal, the Debtors employ and pay a third-party servicer to sample the coal the Debtors are selling to ensure its quality is in accordance with the contract. Pursuant to certain coal sale contracts, and for the benefit of their customers, the Debtors do not charge the purchaser of the coal for these services. The Debtors estimate that as of the Petition Date, approximately \$720,000 in laboratory fees are outstanding, all of which will come due within the first 21 days of these cases.
Demurrage	The Debtors' coal supply contracts with certain export customers contain customary terms—known as “demurrage” provisions—relating to delays that occasionally occur in delivering coal to the ports at which international coal shipments are loaded into vessels for seaborne transport. Generally, such contracts provide that, with certain limited exceptions, the Debtors are required to compensate the customer if the Debtors' delivery of coal to the relevant port occurs after the end of a specified target period. The Debtors estimate that as of the Petition Date, there are approximately \$100,000 outstanding in Demurrage obligations, all of which will come due within the first 21 days of these cases.
Power Price Sharing Adjustments	A small number of the Debtors' coal supply contracts contain power price sharing adjustments that, together with the base price per ton under the contract, determine the amount due upon the sale of coal. The adjustment is essentially a revenue sharing mechanism and can result in a premium to the Debtors (additional revenue above base price per ton sold) or a rebate to the customer (offered as a credit against a subsequent purchase). The price adjustment formula varies by contract, but is generally calculated by multiplying the prevailing price of electricity (\$/MWh) by a specific sharing percentage. The Debtors estimate that as of the Petition Date, there are approximately \$3,000,000 in rebates owed to certain customers under the Power Price Sharing Adjustments, all of which will come due within the first 21 days of these chapter 11 cases.

180. Continuing to administer the Customer Programs without interruption during the pendency of these chapter 11 cases will help preserve the Debtors' valuable customer relationships

and goodwill, which will inure to the benefit of all of the Debtors' stakeholders and their estates. In contrast, if the Debtors are unable to continue the Customer Programs postpetition or pay amounts due and owing to customers, the Debtors risk alienating certain customer constituencies (who might then abandon the Debtors and initiate business relationships with the Debtors' competitors) and might suffer corresponding losses in customer loyalty and goodwill that will harm the Debtors' prospects for reorganization or otherwise damage the value of the Debtors' estate.

181. I believe that the relief requested in the Customer Programs Motion will pay dividends with respect to the long-term reorganization of their businesses, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of these chapter 11 cases.

- (xv) Debtors' Motion for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief (the "Utilities Motion").

182. The Debtors must maintain near constant production or risk losing customers due to missed production targets. The Utility Services are essential for the Debtors to maintain their business through all 11 of their active mine sites (excluding non-debtor Foresight and Murray Metallurgical operations). Should any Utility Company refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted, potentially endangering the Debtors' employees' health and safety, and impacting the Debtors' ability to provide supply to their customers, which in turn could jeopardize the Debtors' ability to manage their reorganization efforts.

183. In the aggregate, the Debtors pay approximately \$8.9 million each month for Utility Services, calculated as a historical average payment for the twelve-month period ending September 30, 2019. Accordingly, the Debtors estimate that their cost for Utility Services during the next 30 days (not including any deposits to be paid or any unpaid prepetition amount that has already been invoiced) will be approximately \$8.9 million.

184. The Debtors intend to pay postpetition obligations owed to the Utility Companies in a timely manner. As additional adequate assurance, the Debtors propose to deposit \$2.2 million into a segregated account (the “Adequate Assurance Deposit”), which represents an amount equal to approximately one-half of the Debtors’ average monthly cost of Utility Services, calculated based on the Debtors’ average utility expenses over the twelve months ending September 30, 2019, excluding any prepaid amounts or Prepetition Deposits held by the Utility Companies.

185. I believe that the Utility Companies are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provides assurance of the Debtors’ payment of their future obligations. The payments thereby minimize the risk of termination of the Utility Services, which could result in the Debtors’ inability to operate their businesses to the detriment of all stakeholders.

186. Preserving Utility Services on an uninterrupted basis is essential to the Debtors’ ongoing operations and, therefore, to the success of their reorganization. Indeed, any interruption in utility services, even for a brief period of time, would disrupt the Debtors’ ability to continue operations and service their customers. Such a result could seriously jeopardize the Debtors’ restructuring efforts and, ultimately, the value of their estates. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Utilities Motion should be granted.

(xvi) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief (the "Taxes and Fees Motion").

187. The Debtors collect, withhold, and incur severance, excise, sales, use, withholding, income, and property taxes, as well as other business, environmental, and regulatory fees and assessments (collectively, the "Taxes and Fees"). The Debtors remit the Taxes and Fees to various federal, state, and local governments, including taxing and licensing authorities (collectively, the "Authorities"). Taxes and Fees are remitted and paid by the Debtors through checks and electronic funds transfers that are processed through their banks and other financial institutions. The Debtors estimate that approximately \$45,069,000 in Taxes and Fees are outstanding as of the Petition Date, of which \$20,547,000 is currently payable or will become payable to the Authorities in the first 25 days after the Petition Date.

188. The Debtors pay the Taxes and Fees to the Authorities on a periodic basis, remitting them monthly, semi-monthly, quarterly, semi-annually, or annually depending on the nature and incurrence of a particular Tax or Fee. The Taxes and Fees are summarized as follows:

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due During Interim Period
Severance Taxes	Taxes imposed on the removal or extraction of natural resources such as coal, oil, gas, and limestone from the land or waters within a state or jurisdiction.	\$9,246,000	\$6,714,000
Excise Taxes	Taxes associated with and indirectly connected to coal production and natural resource extraction.	\$2,394,000	\$2,334,000
Sales and Use Taxes	Taxes imposed on the sale and use of certain goods and services.	\$744,000	\$446,000
Business and Occupation Taxes	Taxes owed in connection with engaging in business in certain cities based on gross income.	\$48,000	\$32,000
Annual Business Filing Fees and Franchise Taxes	Franchise taxes and annual report and privilege fees incurred by the Debtors in various states.	\$1,000	\$0

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due During Interim Period
Income Taxes	Taxes incurred by the Debtors in various states.	\$250,000	\$0
Property Taxes	Taxes and obligations related to real and personal property holdings.	\$24,337,000	\$6,739,000
Fees and Assessments	Taxes and Fees related to permitting, licensing, regulatory assessments, compliance with environmental laws and regulations, and other fees paid to the Authorities.	\$50,000	\$30,000
Fines	Fines related to Mine Safety and Health Administration violations.	\$3,000,000	\$450,000
Reclamation Taxes	Taxes relating to restoring and reclaiming abandoned land.	\$4,017,000	\$3,345,000
Consumption Taxes	Taxes relating to business activities in Ohio, West Virginia, and Pennsylvania and related usage taxes.	\$982,000	\$457,000
Total		\$45,069,000	\$20,547,000

189. I believe that the Debtors' liability to pay the Taxes and Fees may ultimately result in increased tax liability for the Debtors if interest and penalties accrue on the claims for Taxes and Fees, which amounts may also be entitled to priority treatment.

190. I believe the relief requested in the Taxes and Fees Motion is in the best interest of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the relief in requested in the Taxes and Fees Motion should be granted.

(xvii) Debtors' Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Executory Contracts and (II) Granting Related Relief (the "Contract Rejection Motion").

191. The Debtors and their advisors, including A&M, engaged in an initial review of their executory contracts to identify those contracts that are not necessary to their ongoing business

operations or restructuring efforts. The Contract to be rejected provide no benefit to the Debtors' estates or go-forward business operations. Absent rejection, the Debtors would be obligated to pay costs under the Contract for services related to discontinued operations or services that are no longer required. I further believe, in their business judgment, that they could not assume and assign the Contract in a manner that would provide any economic benefit to the Debtors' estates.

192. I believe that rejection of the Contract reflects the Debtors' exercise of sound business judgment and is in the best interests of their estates and their creditors. Accordingly, on behalf of the Debtors, I respectfully submit that the relief in requested in the Contract Rejection Motion should be granted.

[Remainder of page left intentionally blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: October 29, 2019
New York, New York

/s/ Robert A. Campagna
Robert A. Campagna
Alvarez & Marsal North America, LLC
Managing Director and Co-Head of the Eastern
Region Restructuring Practice